Alberta

Administrative Law II
for
Assessment Review Board Members
and the
Municipal Government Board
Members

Government of Alberta
Municipal Affairs

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ISBN 978-1-4601-0377-7 Print
ISBN 978-1-4601-0378-4 Electronic

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Caution on the Use of the Materials

These materials have been prepared for informational and educational purposes and do not constitute legal advice. They are intended as an educational aid for persons in administrative tribunal work, not a substitute for any professional advice. Before acting on this information, readers should consult their own statutes and policies, or seek out the relevant professional assistance.

Learning Objectives

Through interactive exercises, case studies and a hands-on review of forms and procedures, you will learn about:

- The importance of ethical conduct related to assessment review boards,
- What is involved in the hearing process, and
- The principles of good decision making and writing.

In addition, the objective of this workshop is to develop a basic understanding of the administrative obligations when processing a complaint, the principles of fair process in an assessment hearing process, working with an assessment review board panel and supporting decision making and writing. After this workshop, participants will have:

- Examined obligations when processing a complaint and preparing for and participating in a hearing,
- Resolved potential issues during the processing of a complaint,
- Applied the basic principles of fairness in a hearing scenario,
- Made a decision using an integrated decision making model, and
- Written a decision using a decision writing model and standards.

Course Description

Administrative Law II is a two-day course for members of Assessment Review Boards (ARB) and the Municipal Government Board (MGB). This course is designed to provide participants with a basic understanding of administrative law principles and provide the basic skills required in their roles and responsibilities under Alberta's legislative framework. The course is a companion course to *Principles of Assessment I* (for ARB members) and *Principles of Assessment II* (for MGB members) that focus on the basic principles of property assessment in Alberta.

Although the MGB and ARB's hear different types of complaints, the tenets of administrative law and the governing legislation are similar. In this manual, case studies and legislative references are generally directed towards ARB members. An MGB member may participate in a hearing as the provincial member on a composite assessment review board, and/or as a member of a MGB panel. Therefore, the MGB member when taking the course should also reference legislation related to the Municipal Government Board in Part 12 of the Municipal Government Act (MGA).

Course Content

The Administrative Law II course consists of four modules.

Module 1 – Conduct & Collaboration

In this module participants learn about the importance of maintaining independence and accountability. This module will also describe the code of professional and ethical responsibilities for members of an assessment review board, conflict of interest, and hearing conduct. Participants also learn techniques that will enhance ways to work collaboratively with ARB administration and other ARB members.

Module 2 – Administrative Law & Natural Justice

In this module participants are introduced to administrative law, the principles of natural justice, and bias. Participants also learn about their jurisdiction and authority, as well as the related legislation pertaining to assessment review boards. The different jurisdictions of assessment review boards, and hearing styles will be examined.

Module 3 – Assessment Review Board Hearings

This module provides an overview of assessment complaint hearing process. Participants will learn about the pre-hearing preparation and prescribed forms. Preliminary matters, such as adjournments and postponements, access to information, evidence and the role of witnesses. Legal counsel, note taking, and confidential information are also discussed.

Module 4 – Decision Making & Writing

Decision making and writing are processes that will be presented in this module. The components of a decision are not only legislated, but the history of administrative law has evolved to require specific information be contained in them. A case study will be used to demonstrate the process models used. The application of costs and penalties will also be discussed as part of the decision making process.

Learning is reinforced through exercises, case studies and take-away checklists that assist with both the pre-hearing and hearing processes.

Evaluation
An ARB or MGB member must complete this course and the Principles of Assessment I (ARB) or the Principles of Assessment II (MGB) course to be qualified to participate as a panel member in a hearing under their jurisdiction. Full participation in the course and exercises is required and a passing grade on the final examination, to be presented in class, must be obtained.

Terminology

Words and acronyms used throughout this document have the following meanings, unless specifically noted otherwise:

- Administrator – the administrator of the Municipal Government Board or any delegated person referred to in section 486(4) of the *Municipal Government Act*.
- ARB – assessment review board
- CARB – composite assessment review board
- Clerk – the clerk of the assessment review board, appointed pursuant to section 455 of the MGA.
- LARB – local assessment review board
- MGA or Act – *Municipal Government Act*, Revised Statutes of Alberta 2000 Chapter M-26
- MRAC – Matters Relating to Assessment Complaints Regulation (AR 310/2009)
- MRAT – Matters Relating to Assessment and Taxation Regulation (AR 220/2004)
- IA – *Interpretation Act*, Revised Statutes of Alberta 2000 Chapter I-8

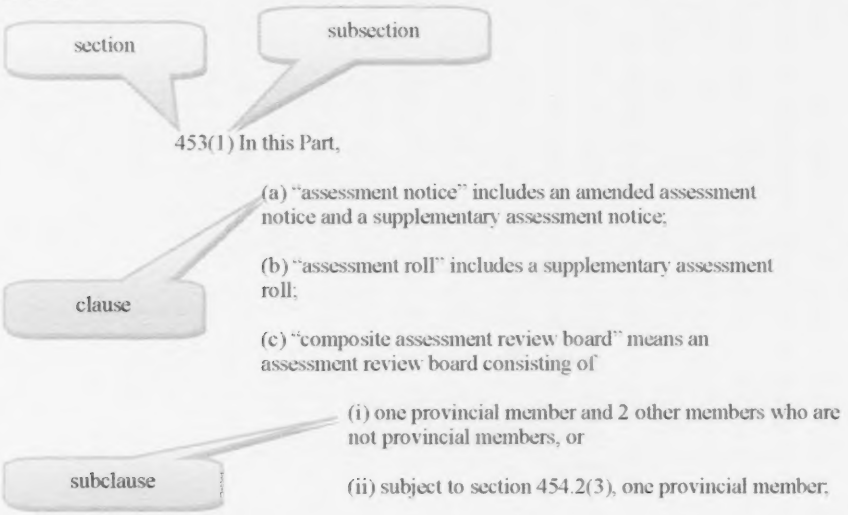
Preamble

In order to perform your duties effectively, you need to know and be familiar with the structure of written legislation.

How Acts and regulations are divided up

Looking at the "Table of Contents" at the front of an Act or regulation, you will see that it is divided into "Parts" which are further divided into "Divisions". Under each Division, sections are listed in numerical order as they appear in the Act or regulation. It does not list the page numbers where these sections are located. The index at the back of the Act lists the subject matter in alphabetical order, but like the table of contents, only references the section of the Act or regulation that deals with the subject matter. When searching for a specific section of legislation, that section will be referenced at the top left hand corner of the page in the Act or regulation.

Sections of legislation are further broken down, and when referencing legislation, a specific terminology is used.


section
subsection
453(1) In this Part,
(a) "assessment notice" includes an amended assessment notice and a supplementary assessment notice;
(b) "assessment roll" includes a supplementary assessment roll;
clause
(c) "composite assessment review board" means an assessment review board consisting of
(i) one provincial member and 2 other members who are not provincial members, or
subclause
(ii) subject to section 454.2(3), one provincial member;

The hi-lighted section would be stated as "section 453, subsection 1, clause c, sub-clause i" and written as 453(1)(c)(i).

* See Users Guide to Legislation in References and Resources for more information

Module 1
Conduct & Collaboration

Maintaining Independence and Accountability through Ethical Conduct

Assessment review board (ARB) clerks and board members are appointed by a municipality under the legislation to:

- administer the complaint process
- hear and decide cases
- apply the legislation and procedures of the ARB
- interpret the legislation where required
- make consistent decisions, and
- provide fair process to the parties.

To carry out its legislative role, an assessment review board must be independent of its appointing authority. At the same time, the ARB and its members are accountable for:

- the decisions they make
- the hearings they conduct
- confidentiality of the information received
- the procedures it adopts and implements
- the budget under its authority
- the collegial support of its members and staff
- the reputation of the process, ARB and panel members, and
- the conduct of themselves and all parties at a hearing.

Having a code of conduct in place can assist the ARB (its members and staff) to meet reasonable standards and goals in its accountability. A code of conduct can be broad or general, detailed or simplified. ARB's may express the code of conduct in different ways, such as in a particular document named a code or through other ARB publications like the mission and goals. A code of conduct should be continually reviewed, refined and refreshed to meet current standards and demands.

It is important for an ARB to develop a code of conduct to ensure all Albertans have access to a fair and independent process with strict adherence to the principles of natural justice and in which all individuals are treated fairly and without bias in an open, orderly and impartial manner. This is important because misconduct or procedures that affect the rights of the parties to a complaint can result in the decision of a board being overturned on appeal to the Court of Queen's Bench.

Remember that your board's procedures should align with your code of conduct, but more importantly must meet all legislative requirements. An ARB must extend the accountability and standards of their code of conduct to the participants in a hearing.

The following pages contain an example of the "Mission, Vision and Goals" statement for the Municipal Government Board, and a generic Code of Conduct that you may use to help develop one for your board.

Municipal Government Board Mission Statement:

MISSION

The Municipal Government Board shall provide timely, independent, quasi-judicial appeal adjudication to all parties in the areas of assessment matters, planning, subdivision appeals, inter-municipal disputes and annexation recommendations, that yields fairness and equity consistent with the authority of the Municipal Government Act.

VISION

The Alberta Municipal Government Board will be a leader among tribunals with a reputation for excellence in adjudication. All Albertans shall have access to a fair and independent process with strict adherence to the principles of natural justice and in which all individuals are treated fairly and without bias in an open, orderly and impartial

This Vision will be attained by:

1. providing benchmark decisions.
2. advocating excellence and providing guidance in decision making to stakeholders.
3. demonstrating efficiency, effectiveness and timeliness in the appeal process.
4. respecting rights of individuals, businesses, corporations and municipalities.
5. ensuring that all property assessments are equitable, fair and correct in accordance with legislation.
6. striving for consistency and predictability based on evidence presented.

VALUES

In service to stakeholders the Municipal Government Board values:

1. our strength through the diversity of our members and the quality of our staff.
2. the right to natural justice and timeliness in the adjudication process.
3. respect for and responsiveness to our stakeholders.
4. provision of quality service to stakeholders.
5. consistent interpretation of legislation.
6. commitment to the Code of Ethics and Conduct.
7. organizational alignment and a team approach to problem-solving.
8. innovative use of automated information services.
9. continuous organizational development, self-improvement and self-evaluation.
10. enriched and rewarding work environment which recognizes productivity.

GOALS

1. Organizational Effectiveness: The Municipal Government Board will be an effective organization, roles and accountabilities will be clear and understood, and processes and relationships will be purposely aligned.
2. Processes: The Municipal Government Board will reflect accessibility, efficient scheduling, timely decisions and fair hearing procedures consistent with the principles of natural justice.
3. Quality Decisions: Municipal Government Board decisions will be legislatively correct, well reasoned, consistent with evidence and relevant case law and will be issued on a timely basis.
4. Stakeholder Satisfaction: The Municipal Government Board will be proactive and responsive to stakeholder feedback and satisfaction. A stakeholder is defined as all people who have a vested interest in the outcomes of the Municipal Government Board. This would include Board members, staff, and all external parties who come before the MGB, the department and the Minister.
5. Budget Plan: The Municipal Government Board budget will reflect the business plan and will provide for effective and efficient use of financial resources to support MGB priorities.

Alberta Generic Code of Conduct for a Public Agency:

The Generic Code of Conduct for a Public Agency (Generic Code) is a sample Code of Conduct for use by agencies.

The Alberta Public Agencies Governance Act (APAGA) requires that each agency have a Code of Conduct (Code) for its members and employees and have a process for administering it. The Generic Code meets the requirements of the APAGA and may be used as a starting point to assist agencies in developing a Code that reflects their unique situation and mandate.

The document, Guidelines for Developing a Code of Conduct for a Public Agency, provides suggestions and examples to consider when modifying this Generic Code or developing a new Code.

[NAME OF AGENCY]
CODE OF CONDUCT

I. Preamble

The Code of Conduct (Code) for [name of agency] applies to all members and employees. The Code reflects a commitment to the agency's values and provides a framework to guide ethical conduct in a way that upholds the integrity and reputation of the agency. Members and employees are expected to behave in a way that aligns with this Code. They understand that this Code does not cover every specific scenario. Therefore, they use the spirit and intent behind this Code to guide their conduct, and exercise care and diligence in the course of their work with the agency.

To demonstrate commitment to transparency and accountability, this Code is available to the public on the agency's website.

II. Core Values

a. Members and employees act with impartiality and integrity.

b. Members and employees demonstrate respect and accountability.

c. [Other values].

III. Guiding Principles

These principles guide the behaviour and decisions of members and employees:

a. The actions and decisions of members and employees are made to promote the public interest and to advance the mandate and long-term interests of the agency.

b. Members and employees are responsible stewards of public resources.

c. To serve the public interest, members and employees have a responsibility to uphold the agency's mandate.

d. Members and employees have a responsibility to act in good faith and to place the interests of the agency above their own private interests.

e. Members and employees behave in a way that demonstrates that their behaviour and actions are fair and reasonable in the circumstance.

f. Members and employees enjoy the same rights in their private dealings as any other Albertan, unless it is demonstrated that a restriction is necessary in the public interest.

g. When a member or employee, as an individual, is subject to more than one code of conduct, the member or employee must consider the expectations in all. Members and employees understand that this Code is not intended to conflict with other Codes of Conduct, and will discuss any potential conflicts with their supervisor or the Code Administrator.

h. The Code applies to all members and employees unless a specific exemption is granted by the Code Administrator.

i. Members and employees know that when they become aware of a real or apparent conflict of interest, they must at the first opportunity disclose this conflict to their supervisor or the Code Administrator.

j. Members and employees understand that disclosure itself does not remove a conflict of interest.

k. Members and employees encourage their colleagues to act fairly and ethically and know that they are able to raise concerns about a suspected breach by another to their supervisor or the Code Administrator without fear of reprisal.

l. Members and employees know that breaches of this Code may result in disciplinary action, up to and including removal of the member or termination of the employee.

m. Members and employees know that if they have any questions about the Code, or are not sure how to apply these principles, they should consult with their supervisor or the Code Administrator.

n. Each member and employee confirms [on an annual basis] their understanding of, and commitment to, the Code's expectations.

IV. Behavioural Standards

Behavioural standards help members and employees make appropriate decisions when the issues they face involve ethical considerations. Behavioural standards cannot cover all scenarios but provide guidance in support of day-to-day decisions. All members and employees must adhere to the following standards:

a. Members and employees must not engage in any criminal activity and comply with all relevant laws, regulations, policies and procedures.

b. Members and employees must not use their status or position with the agency to influence or gain a benefit or advantage for themselves or others.

c. Member and employee conduct contributes to a safe and healthy workplace that is free from discrimination, harassment or violence.

d. Members and employees must not use drugs or alcohol in a way that affects their performance and safety or the performance and safety of their colleagues, or that negatively impacts the reputation or operations of the agency.

e. Members and employees must act in a way that is consistent with the agency's protocols on public comment.

f. Members and employees must take reasonable steps to avoid situations where they may be placed in a real or apparent conflict between their private interests and the interests of the agency. In other words, actions or decisions that members and employees take on behalf of the agency must not provide them with an opportunity to further the private interests of themselves, their families, their business associates or others with whom they have a significant personal or business relationship.

1. Confidential Information

Members and employees must respect and protect confidential information, use it only for the work of the agency and do not use it for personal gain. Members and employees must comply with protocols that guide the collection, storage, use, transmission and disclosure of information.

2. Gifts and Gratuities
Members and employees must not accept or receive gifts and gratuities other than the normal exchange of gifts between friends or business colleagues, tokens exchanged as part of protocol or the normal presentation of gifts to people participating in public functions.

3. Outside Activities
Members and employees must avoid participating in outside activities that conflict with the interests and work of the agency. For example:

   i. Business Interests: Members and employees must not hold interests in a business directly or indirectly through a relative or friend that could benefit from, or influence, the decisions of the agency.

   ii. Employment: Members must not take employment, and employees must not take supplementary employment, that affects their performance or impartiality with the agency.

   iii. Political Activity: Members and employees may participate in political activities including membership in a political party, supporting a candidate for elected office or seeking elected office. However, they must not participate directly in soliciting contributions for a political party. In addition, any political activity must be clearly separated from activities related to the work for the agency, must not be done while carrying out the work of the agency and must not make use of agency facilities, equipment or resources in support of these activities.

   iv. Volunteer Activity: If members and employees are involved in volunteer work, the activity must not influence or conflict with decisions relating to the agency.

4. Pre-Separation
Members and employees considering a new offer of appointment or employment must be aware of and manage any potential conflicts of interest between their current position and their future circumstance, and must remove themselves from any decisions affecting their new appointment or employment.

5. Post-Separation
Once members and employees have left the agency, they must not disclose confidential information that they became aware of during their time with the agency and must not use their contacts with their former colleagues to gain an unfair advantage for their current circumstance.

6. Property
Members and employees may have limited use of the agency's premises and equipment for authorized incidental purposes providing such use involves minimal additional expense to the agency, must not be performed on the member or employee's work time, must not interfere with the mission of the agency and must not support a personal, private business.

7. Related Persons or Parties
Members and employees must avoid dealing with those in which the relationship between them might bring into question the impartiality of the member or employee.

V. Administrative Processes
Administrative processes help members and employees manage ethical dilemmas, including any real or apparent conflict of interest concerns.

a. Administration
The Code Administrator for members and the Chief Executive Officer (CEO) is the [e.g., Chair; Governance Committee]. The Code Administrator for employees other than the CEO is the [e.g., CEO; Governance Committee].

The Code Administrator receives and ensures the confidentiality of all disclosures and ensures that any real or apparent conflict of interest is avoided or effectively managed. As well, the Code Administrator is responsible for providing advice and managing all concerns and complaints concerning potential breaches of the Code, including conflicts of interest within the agency. Even though an agency may have a delegated process for responding to and managing concerns, the Code Administrator is responsible for ensuring procedural fairness.

b. Disclosure
It is the responsibility of each member and employee to declare in writing to the Code Administrator those private interests and relationships that they think could be seen to impact the decisions or actions they take on behalf of the agency. When there is a change in their responsibilities within the agency or in their personal circumstance, members and employees shall disclose in writing any relevant new or additional information about those interests as soon as possible. Where a real or apparent conflict of interest cannot be avoided, members and employees must take the appropriate steps to manage the conflict.

Members and employees disclose these real or apparent conflicts of interest so that the Code Administrator is aware of situations that could be seen as influencing the decisions or actions they are making on behalf of the agency. This provides members and employees, following a review by the Code Administrator, an opportunity to take action to minimize or remove the conflict. To actively manage a conflict of interest, options include:

- removing themselves from matters in which the conflict exists or is perceived to exist;
- giving up the particular private interest causing the conflict; and,
- in rare circumstances, resigning their position with the agency.

c. Reporting a Potential Breach by Another
Members and employees are encouraged to report in writing a potential breach of this Code by another to their supervisor for employees or the Code Administrator for members and employees. When reporting a potential breach in good faith and with reasonable grounds, members and employees are protected from retaliation for such reporting.

d. Responding to Potential Breach
Once a potential breach has been reported, the agency's procedures for responding to and managing a potential breach will be promptly initiated. The Code Administrator will review the circumstance and details of the potential breach and will notify the alleged member or employee. The alleged member or employee has the right to complete information and the right to respond fully to the potential breach. The identity of the reporter will not be disclosed unless required by law or in a legal proceeding. The Code Administrator makes a

decision and completes a report of the review in a timely manner. The decision may range from finding no potential breach to one that reveals suspected criminal conduct.

e. Consequences of a Breach
Members and employees who do not comply with the standards of behaviour identified in this Code including taking part in a decision or action that furthers their private interests, may be subject to disciplinary action up to and including removal of the member or termination of the employee.

f. Review of a Decision
Members and employees can request in writing that the [e.g., Ethics Commissioner; external party] review a decision that has been made by the Code Administrator about a real or apparent breach of the Code, including a conflict of interest involving that member or employee.

VI. Other Resources

a. Where to Get Advice
When members and employees require advice and guidance in determining whether misconduct or a conflict exists, or need clarification, they may discuss their issue with:

- A supervisor for employees
- The Code Administrator for members and employees
- [Other - e.g. ethics officer, ethics committee, compliance officer]

b. Questions to Consider
When members and employees are faced with a difficult situation, the following questions may help them decide the right course of action:

- Have I reflected on or consulted with my supervisor or the Code Administrator about whether I am compromising the Code's values, principles or behavioural standards?
- Have I considered the issue from a legal perspective?
- Have I investigated whether my behaviour aligns with a policy or procedure of the agency?
- Could my private interests or relationships be viewed as impairing my objectivity?
- Could my decision or action be viewed as resulting in personal gain, financial or otherwise?
- Could my decisions or actions be perceived as granting or receiving preferential treatment?

VII. Affirmation

The Code of Conduct for [name of agency] was introduced on [date] and is reaffirmed [annually] by the Board to ensure it remains current and relevant.

Tips for Working Collaboratively With Other ARB Staff and Members

It sounds like motherhood and apple pie to say that everyone in an ARB has to work collaboratively to achieve satisfactory results. Some tips for working collaboratively include:

- work from the same information – different information generates differing viewings and reactions
- set clear processes and time lines
- identify clear role descriptions and expectations
- vocalize expectations – do not encourage assumptions
- focus on the bigger picture and goals, not personal agendas, personal priorities or personal pride
- when cases are expected to be difficult, work out a plan for dealing with the case proactively and consult the parties as needed
- solicit information about what did not happen as expected – be prepared to accept reasonable explanations and give a little leeway for different approaches or methods
- focus on the project and actions, respect the personalities and feelings – remember you are dealing with people
- be prepared to examine alternate ways of doing the work – there may be more than one way to accomplish the task
- treat everyone else as you would wish to be treated
- protect the reputation of the board and the credibility of its processes
- stay involved – inactive persons lose touch
- do your part and do it well
- share the praise and the pain equally
- appreciate the equal roles of the three panel members; the presiding officer may facilitate the discussion but needs to also express his/her own views and should not be acting as a controller or superior person on the panel.

Exercise # 1 – Group Discussion

(15 Minutes)

1. Give two examples of what might constitute misconduct by board members or staff.

2. What issues may arise from not collaborating with other board members or staff?

3. The regular ARB clerk was absent on leave, and the acting clerk forgot to notify the complainant of the disclosure dates. One of the panel members was very upset that they were required to attend a hearing that was not ready to proceed. He vents his anger at the acting clerk.

   What can the ARB do to resolve the situation?

4. You are arriving at the hearing and discover that your pastor is one of two people attending the hearing. The pastor tells you that this is the first hearing he has attended and doesn't know what to expect. He asks if you know anything about it and if you could help them.

   What do you do or say? Why?

5. After the hearing you return to your regular business/job. The next day, you receive a call from the Pastor, who thanks you for being so open minded in the hearing. He says he knows he will get a call and letter from the ARB about the decision, but asks if you can remind him when the decision will be released, and could you give him a hint into what the decision will say.

   How do you react/what do you do? Why?

Module 2
Administrative Law & Natural Justice

Participants learn about the importance of maintaining independence and accountability. This module will also describe the code of professional and ethical responsibilities for members of an assessment review board, conflict of interest, and hearing conduct. Participants also learn techniques that will enhance ways to work collaboratively with ARB administration and other ARB members.

In this module participants will be introduced to administrative law, the principles of natural justice and about the duty to act fairly. Participants will learn about jurisdiction and authority, as well as the related legislation pertaining to assessment review boards. This module also covers how decisions are reviewed.

What is Administrative Law?

Generally speaking, administrative law deals with the organization and powers of the government and the role of law in controlling the exercise of those powers. Administrative law is created from the legislation and decisions of the courts.

Role of an Assessment Review Board

Government authorizes a municipality to establish an ARB to carry out certain work and make decisions on matters related to property assessment.

The Local Assessment Review Board (LARB), Composite Assessment Review Board (CARB), One Member LARB or CARB, and Municipal Government Board (MGB) are examples of ARB's that deal with and make decisions on assessment matters and matters on a tax notice, other than a property tax notice.

ARBs:

- are creatures of statute
- make decisions
- work in a legislative framework
- balance quantitative efficiency with qualitative justice.
- are generally promoted as
  - accessible forums where self representation is possible
  - not bound by rules of evidence or court rules of procedure
  - less concerned with legal forms and technicalities
  - more focused on merits
  - user friendly, cheaper and faster.

Natural Justice and Procedural Fairness

The Rules of Natural Justice

It is the task of an ARB to decide disputes by applying the law at the conclusion of an adversarial dispute in accordance with the principles and rules applying to the administration of justice and in accordance with a procedure designed for this purpose. This adversarial principle is enshrined in section 7 of the Canadian Charter of Rights and Freedoms and also in section 2, as follows:

> "no law of Canada shall be construed or applied so as to: (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations; . . ."

There are two primary principles of natural justice:

> 1. *Audi alteram partem* - a Latin phrase that literally means "It should be heard [audiatur] also the other party", "hear [audi] the other side too", or "hear the alternative party too". Hear the other side; hear both sides. No man should be condemned unheard. In general terms, this means that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.
>
> 2. *Nemo iudex in causa sua* - a Latin phrase that means, literally, "no-one should be a judge in their own cause." It is a principle of natural justice that no person can judge a case in which they have an interest. The rule is very strictly applied to any appearance of a possible bias, even if there is actually none: "Justice must not only be done, but must be seen to be done"

In procedural terms, a decision maker should not only act in good faith and without bias but also should grant a hearing to any person whose interests will be affected by the exercise of that decision before the decision is made.

Procedural Fairness

Foremost rules of procedural fairness required by the primary principles of natural justice in the resolution of complaints are:

> 1. The respondent must be given full details of the accusations. That is, the factual issues and allegations to be examined and discussed should be specified in sufficient detail to enable adequate preparation of a defence and a reasonable opportunity of adequate refutation.
>
> 2. Relevant documents used in judgment on a case must be disclosed to both parties
>
> 3. Decisions to admit or exclude evidence should be based on whether it is relevant, reliable and logically valid, capable of being tested in some form.
>
> 4. There should not be undue delay in hearing the matter. (If a complainant/respondent fails to appear on a number of occasions the case might be determined on the evidence of the party appearing).
>
> 5. Notice of a hearing or conciliation conference should be served on the parties with reasonable time to enable them to prepare their case. The time and place must be clearly specified.
>
> 6. Unless there are exceptional circumstances, do not hear one side in the absence of the other.
>
> 7. Give each party the opportunity to state their case adequately.
>
> 8. Give each party the opportunity to correct or contradict any statement prejudicial to their case.
>
> 9. Witnesses, if any, should be examined or questioned and allowed to be questioned by the other party. Adequate time should be allowed for this "cross-examination".

10. If there are different allegations by different complainants against the same respondent in the same subject area, it may be a breach of procedural fairness to hear the evidence or allegations together rather than separately as one may unreasonably influence the other.

It is important to have a complete understanding of the legislation that governs the assessment complaints process. The legislation and regulations are very specific when it comes to timelines and procedures that the board must follow. There are however areas where the board has discretion, and where natural justice and procedural fairness must be considered.

The Requirement of Fairness in the Assessment Complaint Process

From the previous definitions, you can see the most basic concept of administrative law is that the processes used to reach decisions must be, and be seen to be, fair in order to be valid.

This requirement imposes procedural requirements on ARB members and staff to:

1. give persons affected by a decision the right to be heard
2. not be tainted by bias or the appearance of bias, and
3. have the person(s) who heard the case make the decision.

Whether a procedure will be considered "fair" will depend on all the circumstances of the case. Circumstances include the legislation, the rules or procedures and the unique situations in the particular case.

The MGA and MRAC include procedural sections to ensure everyone gets fair process during a complaint.

The Right to Be Heard

The first concept of fairness, the right to be heard, really means that the parties to a complaint know what the case to be heard is about, have sufficient time to prepare, and a reasonable time to present their own case and respond to the case presented by others in the same hearing. It is important to recognize that this concept applies to both the complainant and the respondent.

In order to ensure fairness in the complaint process, legislated timelines for disclosure of evidence ensure sufficient time for both parties to be prepared for the hearing. This requirement also prevents either party from introducing new matters for the complaint or new evidence that places the other at a disadvantage.

A person can "be heard" in a number of ways: face-to-face in person, by telephone, by video conference, or in writing. There is no requirement for a person to attend a hearing in person. If any person who is given notice of the hearing does not attend, the ARB must proceed to deal with the complaint if all persons required to be notified were given notice of the hearing, and no request for a postponement or adjournment was received by the board or, if a request was received, no postponement or adjournment was granted.

Fairness also dictates that any party to a complaint has the right to counsel or representation. If a complainant is to be represented at a hearing by an agent for a fee or potential fee, the assessed person or taxpayer must sign and provide the ARB with an agent authorization form. If the complainant is being represented by someone other than an agent for a fee or potential fee, there is no requirement to provide the agent authorization form.

Exercise # 2 – Fairness: Right to Be Heard

Instructions:

i. Work with your table members to answer the questions.

ii. If applicable, use the *Municipal Government Act* and *Matters Relating to Assessment Complaints Regulation* to help you answer the questions.

iii. If applicable, when you provide the answer, also give the Part, Division and section of the MGA or MRAC that gave you the answer.

iv. Identify a spokesperson for your group to participate in the class debrief.

v. You have 20 minutes.

Representation

A complainant appears at the hearing with someone to represent them at the hearing.

a. Is the complainant entitled to have a representative (a person to speak on their behalf) at the hearing?

_____

_____

b. What requirements apply to having a representative at the hearing?

_____

_____

Legislative reference: _____

c. Would it be reasonable to delay a hearing so a complainant could get a representative?

_____

_____

Legislative reference: _____

Disclosure of Evidence Prior to the Hearing

Before the hearing the complainant requested a copy of the information used by the assessor to prepare the assessment but the assessor did not provide the information requested.

a. Is the complainant entitled to see the information used by the assessor?

_____

_____

Legislative reference: _____

b. What must the ARB do if the assessor has not provided the information?

_____

_____

Legislative reference: _____

c. What must the ARB do if either party introduces new evidence that has not been disclosed to the other party at the hearing?

_____

_____

Legislative reference: _____

Bias

The second concept of fairness says decision makers need to come to their work with an open mind, willing to let the evidence and the arguments from the parties present persuade them. They need to be unbiased.

Bias is lack of neutrality on the part of the decision maker regarding an issue to be decided. In other words, the decision maker has already made up his or her mind on the case. Naturally, parties want to know that their presentations and efforts have the possibility of persuading the decision maker and influencing the outcome of the case.

An ARB should not be judge in its own case. ARB members should not testify as witnesses in the proceeding over which they preside. Reasonable parties may assume that when assessing credibility, the member will prefer his or her own testimony over that of other witnesses.

Two Types of Bias

The most obvious type of bias is actual bias, such as a pecuniary interest in the decision or a personal association with an interested party, but ARB's also must avoid any appearance (perception) of bias. Actual and perceived biases are both unacceptable in ARB members.

- Actual bias means the outcome is already predetermined.
- Perception of bias is the view of one party before a panel that one or more panel members hold a predetermined result or the high likelihood they hold a predetermined result. The courts limit this category of bias to a reasonable apprehension of bias, meaning one that is objectively and independently assessed, not just the fear or view held by the party.
- A party may ask the courts to overturn a decision made by one or more biased panel members.

What Creates a Perception of Bias?

Courts have identified four common situations in which a decision maker will be perceived to be biased:

i. where the decision maker has a material interest in the outcome of the case (e.g., the member or a person related to the member may benefit or suffer financially because of the decision – often called a conflict of interest or pecuniary interest);

ii. association or prior involvement with one of the parties (e.g., the member is related to or closely involved with one of the parties or witnesses or representatives appearing in the case);

iii. prior participation in the process or a related process (e.g., the member previously represented one of the parties now appearing before the ARB on the same matter or made the decision at an earlier step);

iv. attitude or conduct that shows bias or hostility (e.g., a member who makes statements at the hearing or in public that leave the impression the member has made up his or her mind on the outcome before having heard all of the parties).

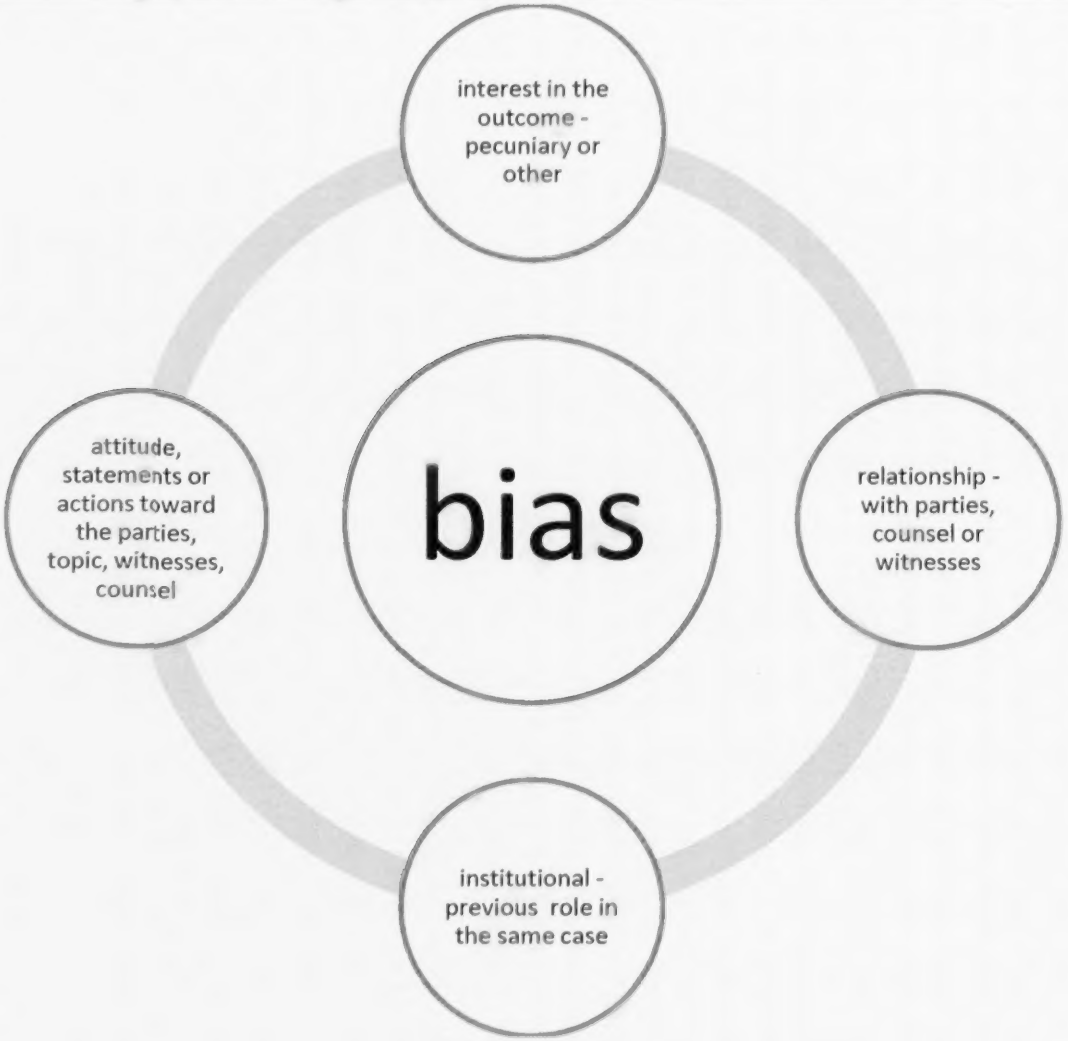

interest in the outcome - pecuniary or other
attitude, statements or actions toward the parties, topic, witnesses, counsel
bias
relationship - with parties, counsel or witnesses
institutional - previous role in the same case

Figure 1 - Categories Creating Bias

The Test for Perception of Bias

The courts created a test to evaluate a concern about an appearance of bias. The test is the reasonable bystander test: Would a reasonable bystander informed of all the circumstances reasonably conclude the decision maker holds a predisposed result for the case?

Regardless of whether a member is consciously or unconsciously biased, or even unbiased, what matters is whether a reasonable, informed person looking at all the facts would conclude that the decision maker could not act impartially. The objector need not show that the apprehended bias actually prejudiced one of the parties or affected the result. It is sufficient for disqualification if this *might* occur. Even decision makers who are confident that they can act impartially, notwithstanding the appearance of bias, must disqualify themselves from the case.

Exceptions to Bias

Some common exceptions around bias include:

- Topic experts who act as panel members. Panel members may be able to draw on their expertise (without adding new information) to decide the case.

- Members of ARB's that deal with complex matters are often drawn from among the experts in the field who, before their appointment, may have appeared before the ARB on behalf of a party. The earlier professional association alone may not give rise to a reasonable apprehension of bias unless the member, before being appointed to the ARB, had some involvement in the matter now before the ARB.

Unbiased **does not** mean uninformed. It means only that the decision maker should be open to persuasion. Members of an ARB may read information about the case before the hearing and may hold tentative views on the matters at issue. If the decision maker realizes he or she has crossed the line from informed and tentative views to convinced, then the person must disclose the bias and withdraw from the case.

Tips around Bias

- ARB members should not prejudge a case.

  They should not make up their minds so strongly in advance that they cannot be influenced to decide another way at the hearing. They should not hold predetermined views of the issues on the matters that would be applied regardless of merits. Evidence of prejudgment is usually found in statements made by ARB members.

- It is unwise for ARB members to express opinions before or during a proceeding.

  A statement that the outcome of a proceeding is a foregone conclusion indicates the existence of impermissible bias.

- Improper conduct by ARB members during the hearing may indicate bias.

  ARB members should never make flippant remarks or derogatory statements about parties or anyone else. Use of intemperate language or the display of feelings of antagonism and hostility toward a party may give rise to a reasonable apprehension of bias against that party. An ARB member who repeatedly interferes with cross-examination or takes part in the questioning of witnesses to such an extent as to appear to descend into the arena may be suspected of having bias for or against a party. A single impropriety may not give rise to a reasonable apprehension of bias, but a series of incidents might do so.

- Bias can arise at any time during the ARB's processing of a case (from the time the appeal is filed until the written decision is sent out).
  Many people deal with the case and the parties during this process. Each person dealing with the case has an obligation to prevent an appearance of bias by the decision makers.

- Bias can arise because of the decision maker's actions outside the hearing.
  Panel members, whether full time or part time, frequently:
  - interact in the community
  - invite feedback and suggestions
  - consult on changes to process
  - build rapport and relationships

- What Happens When Allegations of Bias are Made?

A panel is not to be paralyzed every time someone alleges bias. If the panel decides that a reasonable apprehension of bias on the part of one of its members exists, that member should be replaced before the proceeding commences. If a panel member is replaced for bias, then the hearing must begin again from the start.

Step 1. The panel member, before accepting an appointment to a case panel and continually during the hearing, needs to determine if he or she has a bias or reasonable apprehension of bias. The panel member must:

- consider the names of the parties, representative and witnesses for relationships and prior dealings.
- consider the appeal for any financial interest in the outcome or any previous dealings in this case.
- consult the legislation, previous cases on bias, the panel chair or legal counsel.
- if an actual bias exists, step back from the case.
- if a potential bias exists, disclose the bias to the panel chair, clerk and if required the parties. The parties can waive any concern of bias if they are informed.
- decide to either step back from the case or inform the parties and ask for a waiver. If the parties say no waiver, then step back.
- if no bias exists, accept the appointment.

Step 2. A party who suspects bias on the part of a decision maker must raise the concern with the ARB in a timely way, usually in the form of a preliminary objection to the hearing. If a party was aware of bias during the proceeding but failed to object, it may not complain later if the decision goes against it. An objection must be stated when the bias first comes to the party's attention.

Step 3. When an allegation of bias is made, the panel must conduct an inquiry and make a decision. The member should examine Step 1 first. If Step 1 does not resolve the concern, then the panel as a group (or a one member panel) needs to hear from all parties about the bias allegation and then make a decision. The member alleged to have the bias can participate in the discussions and determination of the result, but cannot give evidence or add any information the parties do not share. If the panel rules the member is not biased, it may continue with the proceedings.

An important note: The parties can waive any concern about bias if they are aware of the information creating the potential bias. Once this waiver has been made, there is no right to appeal the decision of an ARB on the same ground that was waived. It is important to include this waiver as a matter discussed at the hearing in the written decision of the board.

Exercise # 3 – Bias

Instructions:

i. Work in groups of two to answer the questions.

ii. If applicable, use the *Municipal Government Act* and *Matters Relating to Assessment Complaints Regulation* to help you answer the questions.

iii. If applicable, when you provide the answer, also give the Part, Division and section of the MGA or MRAC that gave you the answer.

iv. Identify a spokesperson for your group to participate in the class debrief.

v. You have 10 minutes.

Questions:

Bias

1. At the beginning of the hearing, the chair introduces each panel member and asks the parties if they have any objections to the panel members sitting. The complainant objects to one member of the panel. In which of these cases would the panel decide to continue with the current panel and why?

   a. the member ran for municipal council in the same city as the complainant's property, and the complainant ran against him in the recent election but neither got elected

   _____

   _____

   b. within the last 6 months the member has lived on the same block as the complainant

   _____

   _____

   c. the member has recently done consulting work for the Respondent and has not yet been paid

   _____

   _____

   Legislative reference: _____

   d. the member has made recent public statements in the local paper that there should be a strict application of the words "fair and equitable" so as to reduce the ARB's workload.

   _____

   _____

   e. the panel of the ARB had decided the identical case in the previous tax year.

   _____

   _____

2. Is the following statement biased? "The board's role is to protect the rights of taxpayers" Y/N
   Why / Why Not_____

   _____

   _____

A Decision from the Person(s) Who Heard the Case

The decision of an ARB can only be considered fair when it is made by the persons who heard the case. All panel members must agree on the content of the final draft of the decision. Because there may be a dissenting vote, that vote must be included in the decision.

A decision may be written by someone other than the panel, but must reflect the panels reasons and rational for the decision. In this case it is important to ensure that the writer does not inject any of their pre-conceived notions, opinions or knowledge of the case that was not in evidence, into the decision. The draft of a decision that has been written by someone other than the panel must be approved by all members of the panel prior to releasing the decision.

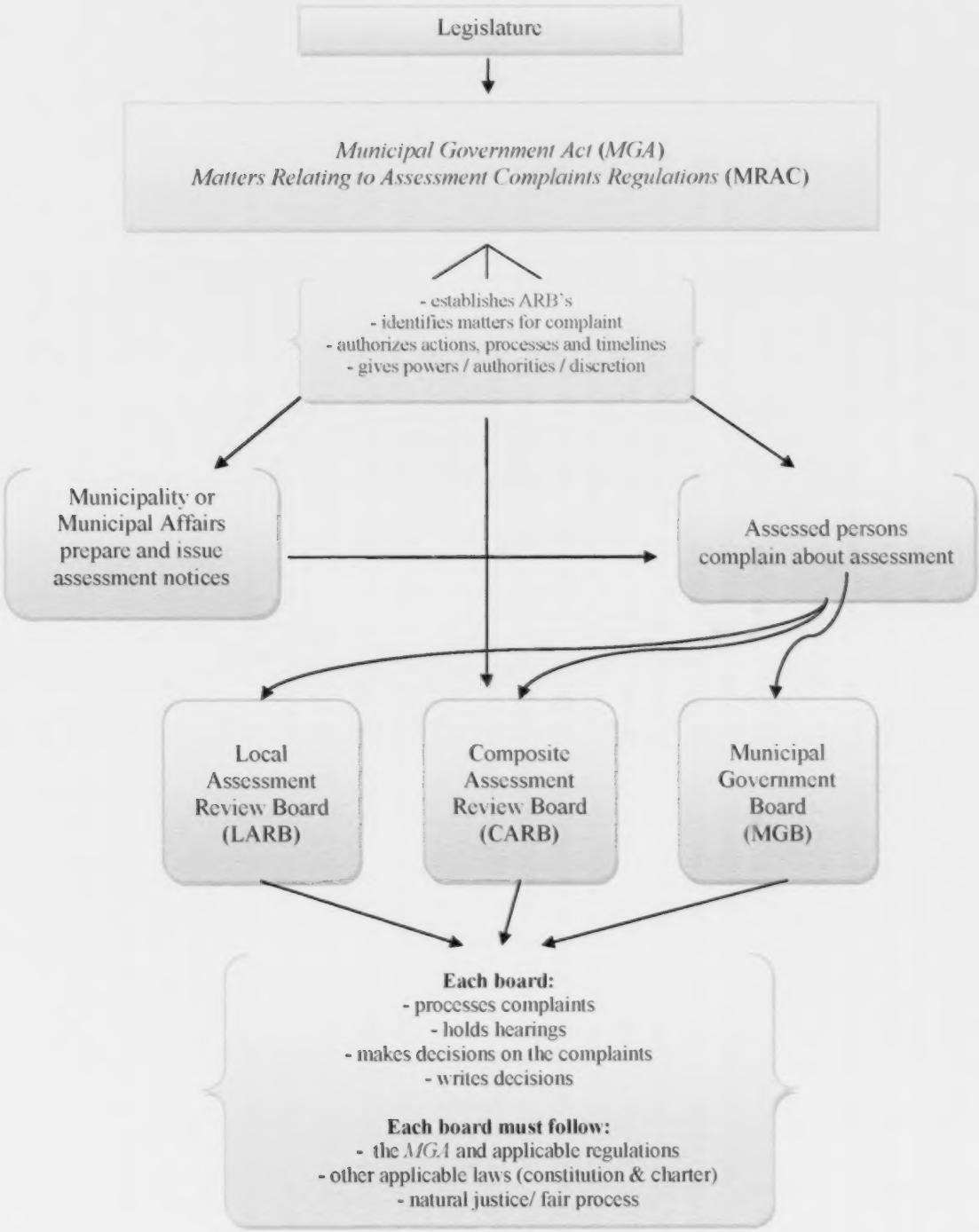
Decision makers have to be cautious about relying on:

- preset policy that limits discretion or applies a formula
- advice or feedback from advisors or outsiders
- previous decisions in other cases (only the decision of the courts can be used as precedence – a decision from another your or another ARB does not set precedence)
- input from persons who did not hear the entire case
- decision drafters or reviewers who impose or substitute (by persuasion) their own decision.

Best practice tips:

- The decision maker(s) must have heard all the evidence and representations from the parties.
- The decision maker(s) must consider all the relevant evidence and information and cannot consider any information not disclosed to the parties.
- The decision maker(s) must apply the legislative requirements and tests to the evidence.
- Legal counsel and professional staff can give advice but must leave the actual choices or decisions or conclusions to the decision maker(s).
- The decision maker(s) must be able to explain the logic for the decision.
- Another person may assist the decision maker to write or edit a decision document, after the decision maker has made the decision.

The Big Picture for Assessment Review Boards


Legislature
Municipal Government Act (*MGA*)
Matters Relating to Assessment Complaints Regulations (MRAC)
- establishes ARB's
- identifies matters for complaint
- authorizes actions, processes and timelines
- gives powers / authorities / discretion
Municipality or Municipal Affairs prepare and issue assessment notices
Assessed persons complain about assessment
Local Assessment Review Board (LARB)
Composite Assessment Review Board (CARB)
Municipal Government Board (MGB)
Each board:
- processes complaints
- holds hearings
- makes decisions on the complaints
- writes decisions
Each board must follow:
- the *MGA* and applicable regulations
- other applicable laws (constitution & charter)
- natural justice/ fair process

Know Your Legislation

As an ARB member, it is important to know the legislation (the Act) and regulations that provide you with the authority or jurisdiction to perform your duties. The legislation and regulations you need to be familiar with are:

- *Municipal Government Act*, Parts 9 through 12
- Matters Related to Assessment Complaints Regulation,
- Matters Related to Assessment and Taxation Regulation,
- Ministers Guidelines,
- *Interpretation Act*

Why are there Acts and Regulations?

Legislation reflects the policy decisions of government as a whole and tends to be broad and more general in nature. Legislation is difficult to change and requires government scrutiny to ensure that any changes align with the policies of the government.

Regulations are usually topic specific and detailed in nature. Regulatory changes are much easier to deal with because they may only apply to the ministry that is responsible for a group or interest that is affected by the change.

Exercise # 4 – Know Your Legislation

The first step is to become familiar with your own legislation and where to find information in that legislation. The following exercise tests your ability to explore legislation.

Instructions:

i. Work in groups to answer the questions.

ii. If applicable, use the *Municipal Government Act* and *Matters Relating to Assessment Complaints Regulation* to help you answer the questions.

iii. If applicable, when you provide the answer, also give the Part, Division and section of the MGA or MRAC that gave you the answer.

iv. Identify a spokesperson for your group to participate in the class debrief.

v. You have 15 minutes.

Questions:

1. A municipal council may pass a bylaw to establish one or more LARBs and CARBs. T/F
   Legislative reference: _____
   _____
2. Local assessment review boards include both three-member and one-member panels. T/F
   Legislative reference: _____
   _____
3. Every board member must be qualified to participate in a hearing. T/F
   Legislative reference: _____
   _____
4. "assessed person" means?
   Legislative reference: _____
   _____
5. "Taxpayer" means?
   Legislative reference: _____
   _____
6. The date by which a complaint about an assessment notice can be made is?
   Legislative reference: _____
   _____

The Concept of Jurisdiction

What is Jurisdiction?

Jurisdiction is the right, power, or authority to make legal decisions within the limits of the enabling legislation.

All acts and decisions of government must be founded on legal authority.

An assessment review board finds its legal authority or jurisdiction within the *MGA* and MRAC.

The *MGA* and MRAC provide the legal authority to create an assessment review board and define each board's jurisdiction. A board's jurisdiction includes:

- who it can make decisions about – an "assessed person" and/or a "taxpayer"
- what matters it can decide
- what remedies it can provide
- what procedures it must follow
- what timelines apply

As mentioned earlier, the *MGA* and MRAC are quite specific on some of these jurisdictional matters, but also allow discretion to the board to determine other matters.

ARB's operate within:

(1) statutory boundaries
(2) natural justice
(3) a standard of correctness and reasonableness for decisions

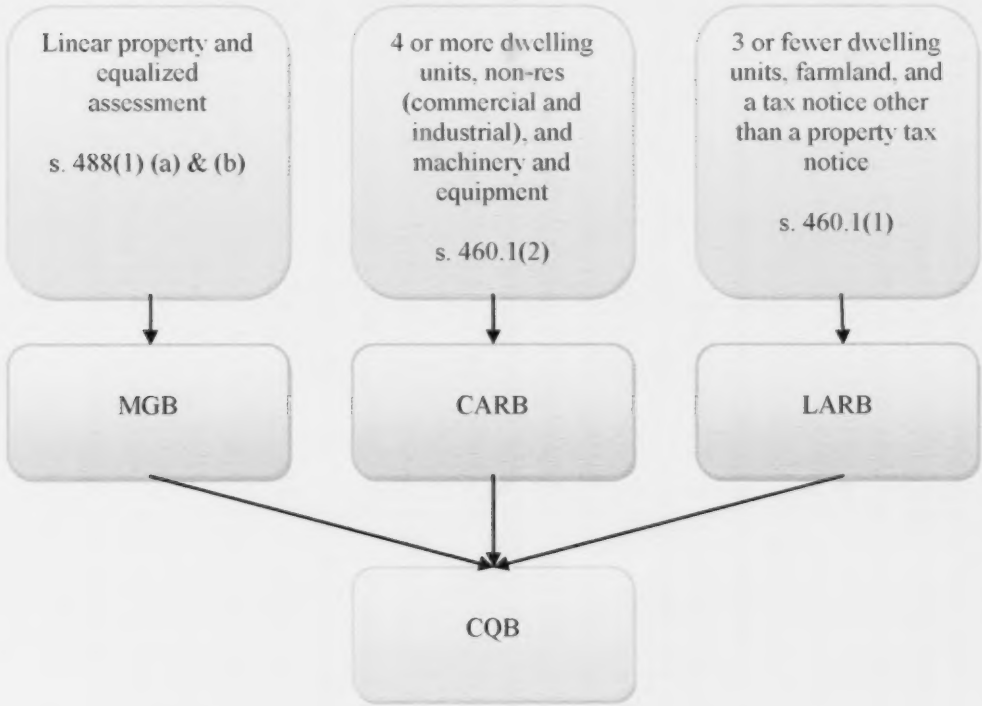
ARBs that operate outside (1) - (3) are likely making an error in law or jurisdiction.

The Courts may let the ARB decision stand (defer) if:

- Enabling statute contains a privative clause (sections of law, typically right in the statutes that creates an ARB, and that states all, or select decisions of that ARB are final and conclusive and not subject to judicial review.)

- Decision meets the standard of correctness and reasonableness. This will be discussed further in the Decision Making component of the course.

When a complaint is filed, it is generally the ARB clerk that determines which board has jurisdiction to hear the complaint. It is important that the clerk has an understanding of the various property types and which board has jurisdiction to hear them. If the clerk is unable to decide which board will hear a matter, the issue should be brought forward to a panel member to review and decide which board has jurisdiction to hear the case.


Linear property and equalized assessment
s. 488(1) (a) & (b)
4 or more dwelling units, non-res (commercial and industrial), and machinery and equipment
s. 460.1(2)
3 or fewer dwelling units, farmland, and a tax notice other than a property tax notice
s. 460.1(1)
MGB
CARB
LARB
CQB

A chart for dealing with ARB Complaints by Notice Type is included in the Appendix of this manual.

Figure 2 Jurisdiction of ARB's

Important note: Generally the ARB has jurisdiction to hear the case unless someone brings something to the panel's attention or the panel notices something to question its jurisdiction. Most often this means:

- a party raises an objection, or
- the clerk or the panel notices the file contains some information that raises a concern about jurisdiction, or
- someone presents evidence in the hearing which raises a concern about jurisdiction.

Exercise # 5 – Jurisdiction

The next step is to become familiar with the jurisdiction of your assessment review board.

Instructions:

i. Work as a group to answer the questions.

ii. If applicable, use the *Municipal Government Act* and *Matters Relating to Assessment Complaints Regulation* to help you answer the questions.

iii. If applicable, when you provide the answer, also give the section of the MGA or MRAC that gave you the answer.

iv. Identify a spokesperson for your group to participate in the class debrief.

v. You have 30 minutes.

Questions:

1. A complaint is invalid if it does not contain certain information set out in the MGA and MRAC. T/F

   Legislative reference: _____

2. A complaint must be filed within a set time limit or the panel must dismiss it. T/F

   Legislative reference: _____

3. The complainant filed their residential complaint using a 15 page letter, with a large envelope of documents and pictures to go with the letter. The complaint contains all the information required on the complaint form but is not on the form.

   a. Does the panel have jurisdiction to hear the case? Y/N

      Legislative reference: _____

   b. Is the complaint valid? Y/N

      Legislative reference: _____

      Why or why not? _____

      _____

      _____

4. A complaint about a business tax notice is received by the clerk of the assessment review board.

   a. Which board would have jurisdiction to hear the complaint?

      Legislative reference: _____

5. A complaint is filed by a farmer who operates a small greenhouse and cannery on his property.

   a. Which board would have jurisdiction to hear the complaint?

      Legislative reference: _____

6. Before the LARB hearing begins, you are reading the disclosure filed by both parties and see that the complainant intends to bring six witnesses. Three witnesses are other home owners who will testify about their own property assessments. The fourth witness is the president of the "Citizens Against Taxing Seniors" (CATS) who will testify that seniors are overtaxed. The fifth witness is an expert property appraiser who has prepared a written report on the market value of the complainants property. The sixth witness is a property manager who will testify about the income from, and costs of maintaining his four-plex property.

   a. Does the information about complainant's witnesses raise any jurisdictional concerns for you? Y/N

      If so, what is the concern? _____

   b. What should you do? _____

      _____

      _____

The Concept of Hearing Style

Earlier in the "Rules of Natural Justice" section, the term "adversarial dispute" was used. Hearing style refers to how the ARB characterizes the type of process the ARB uses to deal with cases. .

The ARB's hearing style is important because it helps the panel members know how to act. How to act includes when and what type of questions the panel members can ask and includes whether the panel can ask for evidence or go and get evidence that fills in gaps or makes it easier or more comfortable for the panel to decide the case. Understanding the hearing style of the ARB helps the parties know how to present their cases. There are three main types of hearing styles: Prosecutorial, Adversarial and Inquisitorial.

Prosecutorial Style

Like a criminal trial. Involves an allegation that someone has broken the law or committed an act contrary to the law or a code of conduct.

Characterized by two or more parties - each representing an opposing view of the case, interacting with the panel. One party acts as the investigating officer/prosecutor for the organization. The prosecutor normally goes first to prove an alleged breach of conduct or standards and the applicable penalty. If the prosecutor does not bring the required information or sufficient information in a case, that prosecutor risks the panel not upholding the breach.

The panel will act like a judge in a trial and let the parties make their own cases as they see fit; the panel will not act as an advocate for any party. A panel member will ask clarification questions, but will not ask questions or seek information that will fill in gaps in the case or provide a fuller story than the parties want to present. The panel makes its decision using only the information presented by the parties.

Inquisitorial Style

Like a public inquiry. Characterized by a single party or sometimes two parties interacting with the panel.

The panel has the obligation to satisfy itself of all statutory requirements and will therefore take on the role of questioning the party/parties as much as necessary to obtain information. The panel has the power to obtain additional information not produced in the hearing. The panel will satisfy itself of the statutory requirements by gathering as much information as it needs and will also apply the principles of fair process.

Adversarial Style

Like a civil trial. Characterized by two or more parties - each representing an opposing view of the case, interacting with the panel. If the party does not bring the required information or sufficient information in a case, that party risks the panel ruling against the party.

The panel will act like a judge in a trial and let the parties make their own cases as they see fit; the panel will not act as an advocate for any party. A panel member will ask clarification questions, but will not ask questions or seek information that will fill in gaps in the case or provide a fuller story than the parties want to present. Such inquisitorial questions can lead to the introduction of new evidence, which may put either party at a disadvantage, goes against the right to know the case to be met prior to the hearing and lastly, the board must not hear any evidence that was not disclosed prior to the hearing. The panel makes its decision using only the information presented by the parties.

Assessment review boards use the adversarial hearing style. Their decisions are based solely on the evidence presented by the parties to the complaint.

The Concept of Decisions

The parties come to a tribunal to get a decision. The decision usually refers to the final decision on the merits of the complaint, application or appeal. Tribunals make decisions about individual rights, benefits, entitlements, disputes between parties and many other matters. Examples of decisions that a government, or its tribunals, may take include decisions about assessment and taxation, the implementation or cancellation of programs, determination of entitlement to benefits, authorizations for indemnification or payment of compensation, the issuance or revocation of licenses or permits, etc. For assessment and some tax related matters, the outcome of the local assessment review board, composite assessment review board and Municipal Government Board processes are decisions.

Tribunal decisions are usually categorized as policy, legislative, administrative or quasi-judicial. Quasi-judicial decisions are those decisions made in a court-like manner and usually concern the rights of an individual. Generally, the courts impose a higher procedural requirement on the making of administrative and quasi-judicial decisions than they do on policy and legislative decisions.

Within the process for handling the case, the tribunal, or persons legitimately acting on its behalf, will make many other determinations that are often also called decisions. These determinations affect the process, when parties can or must take steps, who must take action, who can appear at a hearing, jurisdiction, procedural objections or applications, and evidentiary or procedural questions during the hearing. Determinations like these also affect the legitimacy and validity of the final decision on the merits.

Challenges to Decisions

The acts or decisions of government officials may be challenged by means of an application to the court to overturn or quash a decision (called judicial review or an appeal).

Legislation (here, the Municipal Government Act) and previous court decisions establish the criteria which the courts will use when they review the exercise of government decision-making authority.

People challenge tribunal decisions for a variety of reasons including:

- not agreeing with the result or the reasons
- feeling they did not get a fair hearing
- feeling the panel was biased
- believing the panel did not consider all the relevant evidence or relied on irrelevant evidence
- believing the panel did not correctly apply or interpret the legislation.

Court Review of Decisions

In 2008 the Supreme Court of Canada altered the historical tests for reviewing the decisions of administrative tribunals. In a case called *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Court eliminated the historical three tests of review and confirmed two tests going forward – correctness and reasonableness.

With this decision and several decisions which follow, the courts began to give some valuable insights into what the courts require and expect from tribunal decisions to make the task of reviewing the decision more manageable. The court in *Dunsmuir* focussed on the reasons for decision as one of the single most important aspect of the decision, after the outcome. Reasons provide the transparent, intelligent and logical justification for the findings, conclusions and outcomes reached by the panel; reasons help the

court understand and observe the decision making process used by the panel. Reasons must be able to withstand some scrutiny by the court.

Under the *Municipal Government Act*, all appeals from assessment review board decisions go to the Court of Queen's Bench. **Section 470(1) of the MGA** outlines:

- who can appeal
- time lines for appeal
- grounds for appeal
- how to get information on the appeal
- the requirement of the tribunal to keep an official record.
- what the court will consider when dealing with an appeal
- what the court can order in an appeal.

Section 470.1 of the MGA, clarifies the court's role on assessment decisions. The court will review the ARB decision on the face of the record, meaning using the written documents from the ARB hearing only. The parties will not receive a new hearing where they can call new evidence.

Module 3 – Assessment Review Board Hearings

In this module we will take a look at how administrative law comes together with the legislation that guides an ARB. This module provides an overview of ARB procedures, including the order of proceedings and questions, rules of evidence, the role of witnesses, and case arguments. Participants learn about presiding skills, fact finding, legal counsel, note taking, and confidential information.

Every ARB has its own unique hearing procedures. However, parties (agent's or legal counsel) who appear before multiple boards prefer to see consistency and predictability in these proceedings. Hearings need to be understandable, objective and procedurally fair to the party's. The assessment complaints process, if followed, provides a fair ARB members must demonstrate that they are impartial, competent and qualified to hear the matters before them.

In Module 1 you learned about conduct, collaboration and how establishing a code of conduct and mission statement could provide a solid foundation for your board to guide itself. Likewise, established procedures that complement your code of conduct, will help ensure an orderly and smooth running ARB. To help, a basic checklist for the board to follow is recommended.

Overview - A Typical Hearing Process

1. Call to order and welcome by the Chair
2. Introductions of the panel, parties and other persons in the room
    i. name, organization and role in the hearing (agent, representative, witness, observer etc)
3. Opening comments by the Chair
    i. role and composition of the panel
    ii. role of the parties
    iii. purpose of this hearing
    iv. issues surrounding the matters in the hearing
    v. legislative section(s) that applies
    vi. how the hearing will proceed – what happens when, who goes in what order, time, breaks, hearing being recorded or not, whether the panel will interact with the parties in breaks, whether the panel will ask questions, how the parties can get process assistance during the hearing, whether the panel will give a decision today
    vii. formality in the hearing – rules of evidence do not apply, witnesses may be sworn or affirmed, how to address the panel and members, courtesy and respect in the hearing
    viii. any challenges on bias?
    ix. any objections to the panel's authority – time, process, subject matter?
    x. ready to proceed?
4. Evidence from the parties and experts
    i. start with documents filed / disclosed before the hearing (the evidence)
    ii. review each document and give it a number or identify it for the record.
    iii. explain the MGA and MRAC sections dealing with <u>new</u> evidence. (evidence not disclosed prior to the hearing must not be heard by the board)

iv. restate the matters to be decided, from the complaint, which creates the relevant base for the evidence and enables the panel to more easily deal with applications or objections during the hearing about new documents or documents not provided when requested or within time

v. explain one witness will testify at a time and how each witness is participating in the hearing

vi. explain if witnesses will be sworn or affirmed to tell the truth by the chair or clerk (the witness has the choice of being sworn or affirmed)

vii. explain which party calls witnesses first

viii. explain what happens for each witness – direct examination, cross examination, redirect examination, clarification questions from the panel

ix. tell the parties if questions to the witness are asked directly to the witness or through the chair

x. confirm with the parties if witnesses will be located outside the hearing room until they testify (excluded until they testify)

xi. witnesses to be given copies of all the marked documents (exhibits) – by staff – so they can refer to a document if asked questions about it

xii. witnesses need to speak clearly and slow enough for the panel to take notes and to help the recording if required

xiii. expert witnesses to be questioned first on their qualifications and a decision made by the panel if the witness is an expert and in what field or topic; experts then questioned on the content of their evidence

xiv. deal with each witness and then thank them for attending

5. Arguments / Submissions by the parties

   i. Chair explains what the process involves – who goes first, second etc; if the panel will ask questions; if the parties can debate between them; any time limits on the presentation; whether parties should read from their briefs or cases

   ii. each party presents their argument

   iii. panel asks questions to the parties

6. Closing Comments by the Chair

   i. thank everyone for participating

   ii. confirm the issues surrounding the matters the panel will be deciding using the evidence and arguments presented

   iii. when and how the decision will be sent

   iv. who to contact after the hearing – staff, not panel

   v. firmly close the hearing.

7. Adjournment

Tips on hearings

- Scripts can greatly assist the panel chair to handle opening and closing comments.
- Cards can provide ready access to a typical oath or affirmation.
- Checklists can help the chair and staff deal with objections, concerns or applications that occur during the hearing.

Note: Be sure that scripts, cards or checklists do not restrict your good judgment!

The ARB Hearing

This section has been prepared for informational and educational purposes. It is not a substitute for any professional or legal advice. Before acting on this information, readers should consult their own statutes and policies, or seek out the relevant professional assistance.

1. Panel Member Preparation

The panel will receive information from the clerk that was submitted by the complainant and the respondent in their disclosure. This will include documents, appraisals, comparables and argument. Often, only some of this information will be important for your decision. You will need to organize this information into a logical framework and filter out the useful from the irrelevant.

It is helpful, before the hearing, to do some brief preparation. You must guard against pre-judgment! Do not try to form your own view of what the arguments should be.

Review the available documents to get oriented with the matters and issues that are likely to be raised. It is important to understand the difference between the "matters" for the complaint as specified in **section 460(5)** of the MGA and identified on the complaint form, and the "issues" that arise from those matters that are presented as evidence. An issue is a point in question that is in dispute with respect to or relative to the identified matter. A board cannot hear any evidence with respect to a matter that has not been identified in Section 4 of the complaint form. **See; section 2(1)(a) of MRAC and section 460(7) of the MGA.**

This is an opportunity to review the statutory legislation involved and any important policies related to the case. You can begin to construct a mental outline of the matter(s) under complaint and the issues with respect to those matter(s). This will help you listen effectively and appreciate the significance of what is being said during the hearing.

2. Objections to Jurisdiction or Procedure

Objections or challenges to an ARB's jurisdiction or procedures usually occur before a hearing starts but a motion challenging the jurisdiction of the ARB or objecting to a procedure may be brought at any time. If a challenge to jurisdiction or procedure is raised by either party prior to the merit hearing, proper notice must be given to the other parties, and a preliminary hearing may be required to deal with the matter. The challenge should carefully set out the grounds on which the moving party intends to rely.

Examples of challenges to jurisdiction or procedure might include:

- insufficient or inadequate notice of the hearing;
- failure to comply with any applicable legislation;
- failure to comply with procedural order;
- alleged bias;
- the matter before the ARB is beyond the powers provided in its enabling act;
- a party has applied to a court to have the proceedings stopped;

- someone did not do what they were to do or within the timelines specified;
- parties did not get the information required to prepare; or
- someone needs an adjournment.

Tips for Dealing with Objections

- Try to have any procedural or jurisdictional objections dealt with before the hearing so the merits of the hearing proceed more smoothly. Some administrative matters may need to be dealt with prior to a merit hearing date being set. This is known as a preliminary hearing.

- All parties need to be able to provide their comments on the question. Sometimes a party will need extra time to prepare its response. This might require a postponement of the hearing.

- The panel will need to decide if it has jurisdiction before it can continue to decide the matters. Sometimes the panel can decide immediately and other times it may need to postpone or adjourn the hearing until the panel can get legal advice on the matter. This is particularly so when the motion involves complex questions of law.

- Staff can assist by attempting to reveal any jurisdictional or procedural questions well before the hearing and assisting the parties to exchange all the information about the questions.

3. Adjournments and Postponements

Realistically, hearings cannot always be expected to proceed and be completed at the first sitting. From time to time hearings must be postponed or adjourned.

The term **postponement** refers to rescheduling a hearing which has not yet started, but for which a date for commencement has been set. The term **adjournment** refers to stopping a hearing that is in progress and rescheduling a future date for the continuation of the hearing.

Only in exceptional circumstances as determined by an assessment review board may an adjournment or postponement be granted. Parties must request an adjournment or postponement in writing and, whenever possible, the request should be made in advance. The board should canvass the views of the other participants before making a decision with respect to granting a postponement or adjournment. If an ARB grants an adjournment or postponement, they are still subject to the timelines specified in **section 468 of the MGA** to complete the hearing and render their decision.

The CARB and the MGB have the statutory authority under **section 52 of MRAC** to award costs against a participant when they request an adjournment or postponement that could reasonably have been anticipated, if it results in inconvenience or increased expense to any other participant.

When considering whether or not to grant a postponement or adjournment, an ARB must consider its legislative authority, the complexity of the matter at hand, the amount of time already afforded the parties for the preparation of the case, the efforts of the parties to be present at the hearing, whether or not there have been any previous postponements or adjournments, and any other relevant factors. **See: section 15 MRAC**.

Question's for Discussion:

1. *Would the board postpone a hearing if one of the parties failed to show up?*
    a. Why / Why not?
    b. Is there legislation to deal with this?
2. *What would be considered an exceptional circumstance?*

4. Fairness or Efficiency

All matters concerning processing, scheduling, and hearing a case involve a balancing of the demands of fairness and efficiency. Hard and fast guidelines are not possible, as each case and each request must be looked at on its own merits. It is important, however, to bear in mind that common sense lies at the root of any decision in these matters.

Ensuring that the parties are provided with a fair hearing in accordance with the principles of natural justice is, of course, the paramount concern of any ARB, but efficiency is also essential to the proper conduct of the ARB's affairs. If cases are allowed to drag on without proper reason, the overall quality of the ARB's work is diminished.

5. Access to Information and Disclosure

Parties need access to information before the hearing so they can come prepared to make their presentations at the hearing. Proper prehearing disclosure makes the hearing more focused, makes the hearing shorter and helps to prevent or avoid or lessen objections and applications about process, jurisdiction and evidence.

The MGA and MRAC dictate disclosure obligations and time limits. Panels may have to decide preliminary matters about disclosure and give directions. In some cases, panels may awards costs for a party's failure to comply or for a party's actions that contribute to an extended hearing or unnecessary hearing. **See section 52 of MRAC.**

Pre-Hearing Filing or Disclosure of Potential Evidence

Once a complaint has been filed, a formal process exists for the exchange of information between the complainant and the respondent before the hearing. This exchange of information, otherwise known as disclosure, includes the following:

- all relevant facts supporting the matters for the complaint,
- all documentary evidence to be presented at the hearing,
- a list of witnesses who will give evidence at the hearing,
- a summary of testimonial evidence,
- the legislative grounds and reason for the complaint, and
- relevant case law and any other information the complainant considers relevant.

All parties have an obligation and are accountable for providing complete disclosure within the timeframes set out in MRAC. The parties to a hearing must not be ambushed by the introduction of evidence of which they were not aware. An assessment review board must not hear any evidence that has not been provided to the other party in accordance with the legislation, or that has not been disclosed within the timelines. **See section's 5, 9, 22, 34, 40 and 46 of MRAC.**

Access to Information – MGA sections 294, 295, 299 and 300

Sections 294 and 295 of the MGA refer to an assessor's right to enter on and inspect property, and request information from the property owner in order to prepare the assessment on that property. Sections 299 and 300 of the MGA refers to the assessed persons right to see sufficient information from the assessor to demonstrate how the assessment was prepared, or obtain summary information about other similar properties (used for comparison). Improved access to information and complete data for all parties promotes openness and transparency, leads to greater confidence in assessment quality and will reduce the number of assessment complaints filed.

It is important to understand that access to information requests are available to either party at any time of the year and are not part of the formal complaint process. There are legislated obligations for a municipality to provide information to assessed persons within specific timelines. If information requested under section 299 and/or 300 was not provided by the municipality, a request to the Minister for a compliance review under **section 27.6 of MRAT** is required to deal with this matter.

Although these information requests fall outside the complaint process, they may have an impact on the jurisdiction of an ARB. The Assessment Review Board Complaint form, section 4, contains a statement where the complainant can indicate if they have requested information under section 299 or 300, and whether it was provided to them.

- If an assessed person has requested information under section 299 or 300 and it was not provided, it cannot be used as evidence by the assessor in a hearing and must not be heard by the board. This is considered a failure to disclose and is covered in **MRAC under sections 5 and 9, 22, 34, 40 and 46.**

- If an assessor has requested information under section 295, and that information was not provided within the specified timeline, the assessed person **cannot file a complaint** against that assessment. **See section 295(4) of the MGA.**

Prior to the hearing, a party may make a request to the board for a postponement until information can be received or provided depending on the complexity of the information. This is an administrative matter that the board must decide on, keeping in mind the legislated requirements and natural justice. If the issue of failure to disclose arises at the hearing, the board may, after hearing arguments, determine that:

- the production of a document or witness is required make a correct decision. **See section 465(1) of the MGA**
- a postponement or adjournment is required to provide time for the production of documents **(section 15(1) of MRAC),** and fair disclosure timelines for all parties **(section 6, 10, 23, 3541, 47of MRAC)**.
- they will proceed with the hearing based only on the evidence that has been disclosed **(sections 5 and 9, 22, 34, 40 and 46 of MRAC)**.

Tips for panel members when dealing with access to information requests and disclosure obligations

- determine all legislative requirements and timelines
- deal with all requests or applications in a timely way – who can make the decisions (one member or three member panel)
- obtain sufficient information to make procedural decisions as required; ensure fair process to all parties when dealing with requests or objections
- before the hearing, review all actions and times required and the actions taken to see what is outstanding – this may prompt a postponement or adjournment of the hearing
- consider the relevance of the information that is missing
- consider and use, as appropriate, the power to award costs

Question's for Discussion:

1. *Under what circumstances would a board postpone a hearing?*
2. *Under what circumstances would a board proceed with the hearing?*
3. *Under what circumstances could award costs?*

6. Evidence

Evidence is a complex subject and this section gives only an introduction to the concepts of disclosure, admissibility, relevance, hearsay, and weight of evidence.

Evidence Is

Evidence includes all the means of proving or disproving any matter, for example, oral testimony of witnesses and experts, written records, demonstrations, pictures, objects, reports, maps, videos, audiotapes, letters, notes, diaries, computer or data records, etc. The term "evidence" does not include arguments on behalf of the parties (sometimes called submissions or representations) which are made to persuade the decision maker to take a certain view of the evidence.

The parties bring the evidence to support their cases and to demonstrate to the panel that they meet the legislative requirements for a decision in their favour.

The panel uses the evidence to determine whether the party has met the obligation to prove its case. Has the party proven what it must prove to win the case or obtain the result it seeks? The panel uses only relevant evidence and in decision making, weighs that evidence by determining the value of the evidence in the decision making task.

The documents, witness names, witness statements and other items disclosed by a party before the hearing are proposed evidence only. At the hearing the panel may refuse to accept or admit some of the proposed evidence and then it will not be used to make the decision. This concept reinforces the notion that a panel can read information before a hearing, but must keep on open mind because the information may not be used after the hearing.

Not Bound by Strict Rules of Evidence

ARB's are not bound by all the legal and technical rules of evidence that would apply in a court of law. Some statutes expressly provide that the ARB has the discretion to accept any evidence and information that it sees fit, whether or not the evidence is admissible in a court of law.

The important factor is for the ARB to follow the legislative requirements and if possible, to obtain all of the information it needs to make a reasoned, rational decision.

However, it is helpful to have some understanding of the standards that courts apply when considering evidence, as they can serve as a useful guide in determining the **weight** or importance an ARB should give to a particular piece of evidence.

Two key concepts that universally apply to evidence in ARB hearings are:

1. relevance, and
2. reliability.

Relevance refers to whether the evidence, assuming it is true, can assist the panel in answering the matters before it as listed on the complaint. This is the common test for admitting or allowing evidence into the hearing process.

After the hearing, the panel decides the reliability of the evidence and gives it weight or priority among the evidence when making a decision. The weight of the evidence refers to how much reliance the panel should place on the evidence in coming to a conclusion in the case.

A panel often finds it difficult to gauge the relevance and reliability of a particular piece of evidence until all the evidence has been heard. Whenever the panel makes decisions about admissibility of evidence or weight of evidence, it must be prepared to provide the reasons for its determination.

Admitting Evidence

Evidence is admitted during the hearing. An ARB may accept all kinds of evidence during the hearing. Often it is easier and faster in the hearing to accept the evidence and then determine its relevancy and weight after the hearing.

Generally, all evidence offered to a panel by the parties may be **admitted**, that is, accepted for consideration. Evidence is **admissible** if it is relevant to the matters in the case and there is no law or custom preventing it from being received.

When the panel admits evidence, it or the staff should mark the evidence as part of the official record. Generally ARB's "mark" witnesses by recording their names and administering the oath/affirmation before hearing the witness' testimony. Other evidence (whatever it is) can be "marked" by giving it the next sequential number in the hearing (exhibit 1, 2, 3 etc). The clerk keeps the official list of exhibits/evidence and the names of all witnesses.

How to Mark an Exhibit:

File #: _____

Exhibit No. _____

Date: _____

Entered by: _____

(name of party or by agreement)

Relevance of Evidence

Generally we understand that evidence is relevant if it can assist the panel in some way to answer the matters or issues before it. Evidence assists the panel to reach logical conclusions on the issues.

Relevance cannot be assessed in isolation. It is always necessary to consider the purpose for which the evidence is to be introduced. If a party cannot provide a good explanation as to why the panel should accept a piece of evidence that on its face seems unconnected with the matters to be resolved, the evidence should not be accepted. However, a piece of evidence may, at first, appear to be irrelevant. In the context of the entire hearing, it may turn out to be relevant, although of low probative value. Care should therefore be taken before rejecting any evidence.

A party might be allowed to submit certain evidence at a hearing, but this does not mean that the panel has conclusively decided that the evidence is relevant. If, after hearing all the evidence, the panel decides that the evidence in question is not relevant, the reason should be stated and the evidence ignored in decision making. The tendency generally is to admit evidence and to decide later what weight, if any, should be assigned to the evidence.

Weight of Evidence

Weight of the evidence refers to how strong the inferences or conclusions are that can be drawn from the evidence. The stronger the inferences, the higher the weight or value in decision making. In other words, how valuable is one piece of evidence to prove the facts compared to another piece of evidence.

Weight must be viewed in the context of the whole case. Decisions regarding weight can usually only be made in decision making, once all the evidence has been heard. More of this is presented in decision making where the panel makes findings of fact.

One Common Exception in ARB Hearings - Hearsay Evidence

Hearsay evidence consists of written or oral statements made by persons who are not testifying at the hearing, which are presented as proof of the truth of those statements, i.e., hearsay is a second-hand account of events.

For example, suppose that Mr. X is testifying about a motor vehicle accident and states that he did not see the accident, but he heard Ms. Y say that the traffic light was red at the time of the accident. The purpose for which this evidence is offered is vital to its classification as **hearsay** or **non-hearsay**. Mr. X would be giving direct evidence (non-hearsay) of the fact that Ms. Y made such a statement. He would be giving only second-hand (hearsay) evidence as to the truth of whether the light was in fact red.

One problem with allowing the testimony of Mr. X to be admitted at a hearing is that Ms. Y was not under oath when she made the statement, and testimony under oath, one of the cornerstones of our judicial system, is usually considered necessary in order to ensure that statements are made honestly. A greater problem with Mr. X's testimony is that Ms. Y is not available to be cross-examined on her statement. Under cross-examination, Ms. Y could be questioned on whether she was in a good physical location for viewing the scene of the accident, whether she had good eyesight, whether she was sober at the time, whether she had any particular self-interest in making the statement, or whether she might otherwise be biased in her view of events. A thorough cross-examination would help in determining the probative value of the testimony.

Additional reasons for scepticism or reluctance in accepting hearsay evidence are that:

- the farther removed a statement is from its source, the less reliable it becomes;
- fraud may be more easily perpetrated;
- decisions based on second-hand evidence may not be as good as decisions based only on the best evidence; and
- hearings may be unduly lengthened if every possible piece of evidence is introduced.

ARB's generally refuse to accept hearsay evidence, although they make exceptions. An ARB may accept hearsay evidence, but in so doing it should remain aware of the limitations of such evidence.

Despite the problems with hearsay evidence, the courts have not absolutely excluded hearsay evidence at trial and have developed many exceptions to the general rule against accepting hearsay evidence. The exceptions have developed in a haphazard way as needed to solve particular problems and have usually arisen when the person making the statement is not available to testify and the statement is the only cogent evidence available. Affidavits are hearsay evidence.

Some of the exceptions recognized by courts to the rule against admitting hearsay evidence include:

- declarations against a person's own interest (on the basis that people are not likely to make untrue statements that harm themselves);
- declarations made in the course of a business duty (where the records were made at the time and there was no motive for fabrications); and
- statements made in public documents (because ordinarily public officials will be honest and careful in preparing documents intended to be retained and kept as a public record, available at all times for inspection).

These are only a few examples of a very detailed and complex area of the law. In accepting hearsay evidence, courts recognize that **second-hand** evidence can at times have sufficient inherent trustworthiness to be of value. This is especially true in circumstances where it would not ordinarily be in the speaker or writer's interest to make a false statement.

The point here is that hearsay evidence may be very reliable or very unreliable depending on the circumstances of a particular case. Therefore, evidence should not automatically be rejected as having no value simply because it is hearsay in nature.

Affidavits

An affidavit is a sworn written statement by a person that can provide information:

- Based on personal knowledge and observation
- Based on belief that information provided to the person by another is true
- Contained in documents which are attached to the affidavit.

Essentially, an affidavit is the "direct examination" portion of a witness' testimony, put on paper. It is the information which the witness chooses, in his or her own words, to tell. It does not necessarily contain all the information that the witness knows.

The courts are generally reluctant to admit affidavit evidence to prove facts other than formal or non-contentious points. However, it may be allowed if there are sufficient reasons.

6. The Role of Witnesses

Witnesses participate in hearings to provide information to the panel that can assist the panel in its decision making. Parties determine which witnesses to call in support of their cases and determine the order the witnesses appear. Generally a party calls the witnesses in a way that makes most sense to how they present their case. This order may or may not make sense to the panel at the outset.

Types of Witnesses

A factual witness, which is most of the witnesses in most hearings, can tell the panel about what the witness knows or has seen or heard or of actions or events in the witness has participated. This witness should not give opinions and cannot speak about things beyond the witness's personal knowledge or involvement.

An expert witness may give evidence from personal knowledge or involvement, but frequently provides the panel with an additional level of expertise on a subject matter in the hearing. This witness can also give a professional opinion, which the panel can assess and adopt as its own.

Witnesses can expect questions about:

- their name, role, organization
- general background – may include education, experience, length of service
- general questions leading to the context of the specific information the witness has
- details of the specific information held by the witness
- contrasting versions of events from other witnesses
- clarification of information given by them
- authoring or receiving documents.

Expert Witnesses

Opinions from experts are more reliable than other opinions, and courts will allow **experts** to give opinions on technical matters that involve the area of their special expertise.

ARB's may consider experts' credentials, education, and experience in weighing the expert's opinions or in deciding whether to listen to the evidence at all.

Process for Qualifying an Expert

The following is a frequently-used method for qualifying an expert witness:

- Expert is sworn / affirmed
- Party calling the expert normally files the expert's curriculum vitae (C.V.) or resume in advance, enters it as an exhibit, and supplements the C.V. with a few questions at the outset of examination. The purpose is to establish the person's expertise using their education and/or experience in a particular area.
- Other parties are given on opportunity to cross examine the expert on his or her qualifications to establish "expertness" and to lessen the impact of later testimony.
- Other parties may ask the ARB to refuse to hear opinion evidence from the expert if the qualifications are not proven.
- Panel hears any arguments from the parties about whether to recognize the witness as an expert.
- Panel makes a ruling on whether to accept the witness as an expert and in what area.
- If the panel accepts the witness as an expert, the chair says "we recognize _____ as an expert in (area of expertise).
- If qualified as an expert, the party calling the expert witness continues with the rest of the questions in direct examination.
- The ARB may decide to waive the formality of qualifying a witness under the following circumstances:
  - if the ARB already knows the witness to be an expert in the area in which she or he proposes to testify, or
  - if the evidence will be limited to an area where the ARB has reason to be confident of its own expertise.

Tips for panel members around witnesses:

- deal with the witness only in the hearing
- obtain proper spelling of names for the decision document
- in the hearing be prepared to provide information to witnesses about the hearing process
- swear or affirm witnesses if required
- ensure a separate chair and table for the witness at the hearing – in clear view and hearing of the panel and all parties

- determine and understand the authority of the ARB to order witnesses to appear or produce documents – who can exercise the authority, when, in what form
- parties are responsible to identify their witnesses, determine the order to call the witnesses at the hearing, inform their witnesses when to attend the hearing and where, pay their witnesses fees or expenses as arranged between them.

Compelling Attendance of Witnesses or the Production of Documents

An ARB has the legislative authority to order witnesses to attend the hearing and/or require the production of documents. **Section 465 (ARB) and 497 (MGB) of the MGA** gives this authority. The exercise of this power is rare and caution must be used when considering its use.

There are times however, when the board may require the production of documents in order make the correct decision in a case.
A one member panel may be able to deal with this type of application if it is a pre-hearing administrative matter; however, once the hearing has commenced a three member panel will deal with the matter.

Compelling Attendance of Witnesses

Some general considerations of a panel when dealing with requests to compel attendance of witnesses include:

- the statute may enable the parties to call any witnesses they deem fit (ARB's cannot hear any evidence that was not contained in the prehearing disclosure.)
- the ARB may have a practice of compelling the attendance of any witness requested by a party and dealing with any objections related to that witness at the hearing
- some ARB's will deal with requests to compel attendance of witnesses as pre-hearing procedural matters which may give rise to additional questions about sufficiency of time for the hearing, relevance of evidence, or other procedural matters
- some ARB's will deal with requests to compel attendance as "ex-parte" applications that are not discussed with the other parties before the hearing in order to protect the witness from "pressure" by the other parties.

If the ARB issues a "Notice to Attend" or "Subpoena" to a Witness and the witness does not attend the hearing as required, the party seeking the witness must decide how to proceed. Generally, the party seeking the witness' evidence would, if the matter is serious enough, ask the ARB to file the decision to compel attendance in the courts (subject to statutory limitations) and then the party would enforce that order as an order of the court.

Requiring Production of Documents

Some considerations to keep in mind when dealing with requests to compel production of documents include:

- statutory powers of the ARB around what can be compelled and when
- documents should be relevant to the matters before the ARB and the onus rests with the party seeking the documents to convince the panel that the documents are relevant.
- production of documents can put a party to extensive costs in time and resources to search out and produce documents. A balancing of interests may be necessary.
- persons or organizations who are not parties to the hearing should be given an opportunity to speak to the request for production of documents before the panel makes its decision

- generally, the party being asked to produce the documents should be given the opportunity to make comments to the panel before the panel makes its decision. A party may voluntarily agree to produce all or some of the documents.
- the panel may have to give directions to protect documents or preserve confidentiality or to set time lines for production and copies.

The board must be cautious that when compelling the attendance of a witness or the production of documents. An ARB must not compel evidence that is not relevant to the matters identified that are under complaint.

Sample Subpoena /Notice to Attend / Production of Documents

(Letterhead and Logo of the Tribunal)

TO: (name and address of person being sent the notice)

You are required to attend before the _____ on:

Date, time and place

and at such times and places as the hearing may continue until concluded,

to give evidence in a hearing between _____names of parties _____ concerning _____description of the case _____.

Or

You are required to produce the following documents to:

Name, Date, time and place

In relation to a hearing between _____names of parties _____ concerning _____description of the case _____.

(The tribunal may want to insert a caution about the failure to appear or adhere to the order)

Date and signature of a tribunal official

7. Working with Translators

Translators assist witnesses who testify in a language not understood by the panel. The ARB wants to ensure the translator will accurately translate what is said in either language.

Interpreters or translators assist the ARB by translating the questions to a witness and translating the witness' answer to the panel and counsel. Translators must be sworn or affirmed before the witness is sworn or affirmed. The purpose of the translator oath or affirmation is to ensure he or she is fairly and honestly translating what is transpiring.

A typical interpreter's oath is:

> *Do you swear that you will fairly and accurately translate the questions asked and the evidence given at this hearing so help you God?*

A typical interpreter's affirmation is:

> *Do you solemnly affirm to fairly and accurately translate the questions asked and the evidence given at this hearing?*

8. Case Arguments

Parties will often refer to previously decided cases in support of their arguments to the panel. Those cases may be publicly available on a website or in a library.

Previous cases help the parties assess the merits of their own case and determine if they should proceed to hearing and the likely outcome.

Previous decisions help the panel by showing how other panels interpret and apply the legislation and procedural principles. The closer the facts of the previous case to the case at hand, the more persuasive the previous case can be to the panel. Previous decisions of another panel are never binding on the panel, but the decisions of the Alberta courts or Supreme Court of Canada are binding.

Panel decisions should be consistent with earlier decisions from the same panel or from a similar panel to provide the best benefit to the public, parties and future panels. Consistency refers to the way in which the panel deals with matters of principles, legislative terms, legislative interpretation and legislative application, not with the facts of a case.

Panel members need to read and be aware of decisions of other panels. Staff can assist by being aware of new and leading decisions and bringing those decisions to the attention of the panel.

9. Legal Counsel

Legal counsel participates in hearings in two ways: as a representative of one of the parties or as an advisor to the panel.

Counsel as Advocate

When legal counsel for a party participates in the hearing, counsel must adhere to all the requirements and standards of the process required of the party.

In addition, in ARB hearings the complainant must complete the Agent Authorization form before counsel can attend the hearing to represent the complainant **(section 51 MRAC)**.

Counsel will frequently interact with staff before the hearing to learn about process, deal with disclosure and access to information, and identify and resolve prehearing or procedural matters. Post hearing, counsel may challenge the decision in court, prompting staff to prepare the record for the court application.

Counsel as Advisor to the Panel

Section 17 of MRAC states the ARB may only seek legal advice from a lawyer who is independent of the parties to the hearing. The municipality is a party to the hearing, so the municipality's legal counsel cannot be used by the ARB.

Counsel may meet with the panel privately or deal with requests from the panel and may give the panel legal advice on content and process. Counsel cannot direct the panel on any matter; all decisions, whether substantive or procedural, remain the panels to make.

Most often counsel's advice is not shared with the parties. In some cases, ARB's have standard practices to disclose most information from its independent counsel to the parties (some information counsel would advise against sharing). Where the counsel's advice raises new information or a new legal case or principle, the parties should be informed and given the opportunity to respond before the panel makes a decision.

10. Note Taking

Parties take their own notes in the hearing. Panel members should take their own notes to assist them with the decision making. The clerk should make notes to assist with creating the official record under **section 14 of MRAC**.

Tips for the panel's notes

- times of activities in the hearing
- witness names
- evidence numbers and identifiers
- names of panel members
- names of those attending the hearing and roles
- dates of the hearing
- location of the hearing
- any commitments by any party to the panel and when required (to follow up)
- any commitments or cautions by the panel to the parties and timelines
- if the hearing recesses or adjourns, the point the hearing reached and the reason for the adjournment
- any objections or applications raised in the hearing and a summary of the panel's decision and any reasons given during the hearing.

11. Confidential Information

Confidential information may be presented or demanded before or at a hearing. Assessment hearings are part of the provincial and municipal process, so provincial legislation about personal or confidential information applies. Provincial legislation provides exceptions to ARB processes from the general rules which apply to personal or confidential information. These exceptions ensure panels can do their work and make decisions based on solid information.

Panels and Staff Need to

- know the legislative protections for personal, business or confidential information
- know the exceptions in the legislation for ' hearing processes
- understand that the hearing process and solid decision making can be undermined by excluding information because of the confidentiality shield
- be sensitive to how they handle confidential or personal information

- deal with objections or applications in a way that enables consideration of all the factors
- balance the need for information in the hearing with the concept of confidentiality
- find ways to manage the information so that concerns about personal and confidential information can be minimized or protected during the hearing process

12. Representatives and Agents

Some parties will choose not to present their own case during the process or at the hearing. Some parties will choose to have another spokesperson or a lawyer or an agent represent them. Under **section 51 of MRAC**, a complainant who wants to have an agent represent him or her during the complaint process or at the hearing must complete and sign the Agent Authorization Form. **Section 1(1)(b) of MRAC** defines agent.

Tip: Read the agent authorization form to see what the assessed person or taxpayer acknowledges to, and what the agent is authorized to do.

13. Record of the Hearing

All ARB's must make and keep a record of each hearing in accordance with **section 14 of MRAC**. It is important to maintain an accurate record in case a decision of the board is appealed to the Court of Queen's Bench. The parties to the complaint will rely on this record as evidence in their appeal.

Exercise # 6 – Hearing Process

Instructions:

i. Work in groups of two to answer the questions.

ii. Use the *Municipal Government Act*, and the *Matters Relating to Assessment Complaints Regulation* to help you answer the questions.

iii. When you provide the answer, also give the Part, Division and section of the MGA or MRAC that gave you the answer.

iv. Identify a spokesperson for your group to participate in the class debrief.

v. You have 15 minutes.

Questions:

Jurisdiction

1. At the start of a hearing before your local assessment review board, the respondent states that the complaint was filed after the deadline stated on the assessment notice, and questions the board's jurisdiction to hear the case. The date on the assessment notice was a Saturday, and the complaint was not filed until the following Monday.

    a. Does the LARB have jurisdiction to hear the complaint? Y/N

    Why? _____

    _____

    _____

    Legislative reference: _____

Postponements

1. The Complainant sends a letter to the CARB 8 days before the hearing and requests the hearing be postponed. They explain that the disclosure made by the respondent is highly technical in nature and they require further time to prepare their rebuttal evidence.

    a. When must the complainant submit their rebuttal evidence?

    _____

    Legislative reference: _____

    b. Does the CARB have jurisdiction to give the complainant more time? Y/N

    Why? _____

    _____

    _____

    Legislative reference: _____

2. The day before the hearing, the Complainant calls the LARB stating her godmother in Arizona is dying and she must leave town to be with her.

    a. Should the LARB grant a postponement? Y/N

    Why? _____

    _____

    _____

    Legislative reference: _____

3. Three days before the hearing the Agent for the Complainant calls the CARB requesting a postponement as they need more time to prepare for the hearing. All disclosure of evidence has been made.

    a. Should the CARB grant a postponement? Y/N

    Why? _____

    _____

    _____

    Legislative reference: _____

4. Can an ARB postpone a hearing indefinitely? Y/N

    Why? _____

    _____

    _____

    Legislative reference: _____

Timelines

1. The Complainant has requested additional time to file her rebuttal evidence stating that as English is not her first language; she is having some of the documents given to her by the Respondent translated. She states that the Respondent will agree to an extension of the filing deadline.

    a. Can the timeline be expanded and if so, under what conditions? Y/N

    Why? _____

    _____

    _____

    Legislative reference: _____

2. On the day of the hearing, the Complainant shows up and states that they have received documents that were not disclosed to her by the Respondent until the day before the hearing. The clerk of the CARB confirms that these documents were just received.

    a. Can the board hear this evidence? Y/N

    Why? _____

    _____

    _____

    Legislative reference: _____

Records

1. After the hearing has been completed and the decision published, the complainant appeals to court. The ARB must put together the Record of Hearing.

    a. What documents must be contained in the record?

    _____

    _____

    _____

    _____

    _____

    _____

    _____

    Legislative reference: _____

    b. How long must the board keep these records?

    _____

    _____

    Legislative reference: _____

Evidence

2. At the hearing, the panel is reviewing the documents filed by both parties. The complainant informs the board that they forgot to include a key piece of evidence in their disclosure package and attempts to introduce the evidence.

    a. What should the board do in this case?

    _____

    _____

    Legislative reference: _____

    b. What must the board consider should this occur?

    _____

    _____

    _____

    _____

    _____

3. The clerk of your board has received a complaint and scheduled a hearing before the LARB. The clerk informs you that the complainant indicated on the complaint form that they made a request for information under sections 299 & 300 from the municipality, but did not received it. All disclosure has been made by both parties and the hearing begins. The complainant begins to present evidence and remarks that the disclosure made by the respondent is inadmissible because it is represents information that was not provided to them.

    a. What must the board do in this case?

    _____

    _____

    _____

    Legislative reference: _____ _____

4. The complainant states that the respondent has brought forward evidence that was withheld from them when they made a section 299 request to the municipality. The complainant further states that they were unaware that this information existed. The respondent states that the specific information the complainant requested was provided and the evidence in question was not specifically requested.

    a. Is this a reasonable position for the respondent to take?

    _____

    _____

    _____

    b. What does the legislation state with respect to what information must be provided?

    _____

    _____

    Legislative reference: _____

c. If the information that was withheld is not relevant to how the assessor prepared the assessment, should the board consider it or dismiss it?

Why/Why Not _____

_____

_____

d. If the information that was withheld is relevant to how the assessor prepared the assessment, what should the board consider as a remedy?

_____

_____

_____

Legislative reference: _____

5. After the hearing concludes but before the panel sends out its decision, the complainant sends in a letter enclosing a sworn statement from another witness that could not be present at the hearing. The letter and statement have not been copied to the other party. The clerk tells you about the letter and statement.

a. What do you do?

_____

_____

_____

Legislative reference: _____

Witnesses

6. During the disclosure process, you are informed that the complainant's neighbour will appear and give evidence about certain critical parts of the complainant's case. On the day of the hearing, the neighbour is unable to attend but has sent a signed statement containing their evidence. All of the evidence in the statement was previously told to the complainant who now wants to tell you what the neighbour said to them. In particular, the complainant wants to tell you:

- What an appraiser said to them about the effect that the location of their houses had on their value, and
- How many square feet of space was added to the complainant's house and what renovations had been done.

a. Should you accept the signed statement? Y/N

Why? _____

_____

b. Should you hear the evidence regarding what Ms Smith said? Y/N

Why? _____

_____

_____

c. If you do hear the evidence, what weight should be given to a. and b.?

_____

_____

_____

Representatives and Agents

7. A complaint has been filed with no indication that an agent would be representing the assessed person. On the day of the hearing, the complainant shows up with an individual whom they state is their agent who will representative them at the hearing.

   a. What would the board do in this case?

   _____

   _____

   _____

   Legislative reference: _____

Tips Around Hearings

These tips are for both the panel and the clerk. Each person needs to be aware of what everyone else is or should be doing to make the hearing process fair.

Before:

- panel check for biases; staff identify potential concerns about bias
- staff ensure the proper documents are filed, received, shared before the hearing within the proper time limits
- staff answer inquiries from the parties – about process, legislation, time limits etc.
- staff make the hearing arrangements and send out notice of hearing
- staff prepare the hearing package/file for the panel
- staff and panel come to the hearing well rested and prepared to participate
- staff bring the legislation, rules etc
- panel and staff read the materials or determine when to read them and how to deal with questions the panel may have
- panel and staff read the legislation and procedures and anticipate any concerns that might arise at the hearing
- staff ask questions of the panel chair if unsure
- panel keep an open mind

During:

- panel (and staff) remain sensitive to situations raising potential biases
- help maintain the hearing decorum – apply the procedures
- panel ask appropriate questions – if member is unsure, request a recess to speak with the panel
- panel keep an open mind
- panel keep own notes to help with decision making
- staff keep the hearing record, list of evidence and witnesses and transcript of the hearing
- staff and panel keep hearing fairness in mind at all times

After:

- panel set aside the appropriate time to discuss the case to make a decision
- panel and staff remain sensitive to situations raising potential biases
- staff and panel - use a decision making model to help the panel
- determine what the standard for decision making is
- panel keep an open mind until you've reviewed all the evidence
- members voice input in the decision making

- determine who will write the decision and when the panel will review the draft
- panel (and staff) review the draft to provide meaningful feedback
- panel and staff keep fairness in mind
- staff finalize the record
- staff publish the decision and deal with inquiries about it

Module 4 – Decision Making and Writing

Decision Making

Decision making is a process that, when applied properly, will lead the panel to an informed, well founded and logical decision that is easy to explain and justify. The Municipal Government Board has provided a model that incorporates a five step process that can be used by ARB's to produce good decisions. In general, these five steps are:

1. identifying the issues in support of the matters for the complaint
2. identifying the legislative requirements of each matter
3. identifying and sorting the relevant evidence
4. applying the facts to the legislation
5. reaching the decisions

Each step involves a separate action by the panel and progresses the panel to an informed, well founded and logical decision which is easy to explain and justify. In detail, the five steps are:

1. ***Identifying the issues in support of the matters for the complaint.***

    - The assessment complaint form identifies the matters, and the disclosure evidence supports those matters; the panel must not hear any matter not identified on the complaint form, or any evidence that was not disclosed.

2. ***Identifying the legislation and framing the issues/questions and conditions or legislative requirements of each issue***

    - The assessment complaint raises the issues; the panel cannot deal with issues not raised in the complaint.
    - The panel then searches the applicable legislation to determine the sections that apply.
        - To determine if the panel has the jurisdiction (or authority) to deal with the case.
        - To read the sections and make a list of the conditions, standards, pre-requisites that must exist for it to decide the case. This becomes the list of the factual items the parties must prove to obtain the answers they seek (the conditions, criteria, required elements, etc).
    - Next, the panel will state the issues and conditions as questions to focus themselves and to move them towards answering the questions for the parties.

3. ***Identifying the relevant evidence and making findings of fact on the evidence***

    - The panel sorts the evidence received in the hearing according to the list of conditions under each issue. The key to sorting the evidence quickly is to apply the relevance test.
    - Then the panel takes each group of evidence and assesses it to determine if the condition has been met or proven or not.
    - The panel repeats the previous step over and over until all the evidence has been examined.

4. ***Applying the facts to the legislation to reach conclusions and expressing the decision maker's rational for the conclusion.***

    - The panel goes back to the list from Step 2 (the legislation) to determine what conditions are mandatory and what conditions are optional for the party to prove. Mandatory conditions must be established through evidence or the complainant will not be successful. Optional conditions mean the party may be able to prove only one of a list or prove the item in a number of different ways.
    - Then the panel does a comparison of what must be proven to the list in step 3 (what has been proven) to come to a logical answer to the questions posed in the issues. Has the legislative test been met?
    - Where the two lists match, the legislation will direct the panel to the answer on the issue.
    - Where the two lists do not match, the panel will not have the authority to give the answer the complainant seeks and will have to dismiss the complaint or deny the application.

The panel's discussion about how and why it makes the choices it does become the panel's reasons for decision.

5. ***Reaching the decisions and formulating the directions for implementation***

    - Finally, the panel collects all of its decisions on the issues and reaches its final decision on the complaint.
    - The panel then identifies the directions or remedies the case requires and any details of implementation.

A copy of the "Assessment Review Board Decision" template can be found in the handouts section of your binder.

Decisions of an Assessment Review Board –Key Legislation

The decisions of an ARB must adhere to the legislation that governs the complaint process. The MGA outlines what an ARB or the MGB must consider when it makes a decision.

Section 467(1) An assessment review board may, with respect to any matter referred to in **section 460(5)**, make a change to an assessment roll or tax roll or decide that no change is required.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with **section 460(7)**.

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations
(b) the procedures set out in the regulations, and
(c) the assessments of similar property or businesses in the same municipality.

(4) An assessment review board must not alter any assessment of farm land, machinery and equipment or railway property that has been prepared correctly in accordance with the regulations.

Assessment review board decisions

Section 468(1) Subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or
(b) before the end of the taxation year to which the complaint that is the subject of the hearing applies, whichever is earlier.

(2) Despite subsection (1), in the case of a complaint about a supplementary assessment notice, an amended assessment notice or any tax notice other than a property tax notice, an assessment review board must render its decision in writing in accordance with the regulations.

Decisions of the Board – MGB

Section 499(1) On concluding a hearing, the Board may make any of the following decisions:

(a) make a change with respect to any matter referred to in **section 492(1)**, if the hearing relates to a complaint about an assessment for linear property;
(b) make a change to any equalized assessment, if the hearing relates to an equalized assessment;
(c) decide that no change to an equalized assessment or an assessment roll is required.

(2) The Board must dismiss a complaint that was not made within the proper time or that does not comply with **section 491(1), (2) or (3)**.

(3) The Board must not alter

(a) any assessment of linear property that has been prepared correctly in accordance with the regulations, and
(b) any equalized assessment that is fair and equitable, taking into consideration equalized assessments in similar municipalities.

(4) The Board may, in its decision,

(a) include terms and conditions, and
(b) make the decision effective on a future date or for a limited time.

Board decisions – MGB

Section 500(1) Subject to the regulations, if the hearing relates to a complaint about an assessment for linear property, the Board must,

(a) in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) before the end of the taxation year to which the assessment that is the subject of the hearing applies,

whichever is earlier.

(2) Subject to the regulations, if the hearing relates to a complaint about the amount of an equalized assessment, the Board must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) within 150 days from the date the Minister sends the municipality the report described in **section 320,**

whichever is earlier.

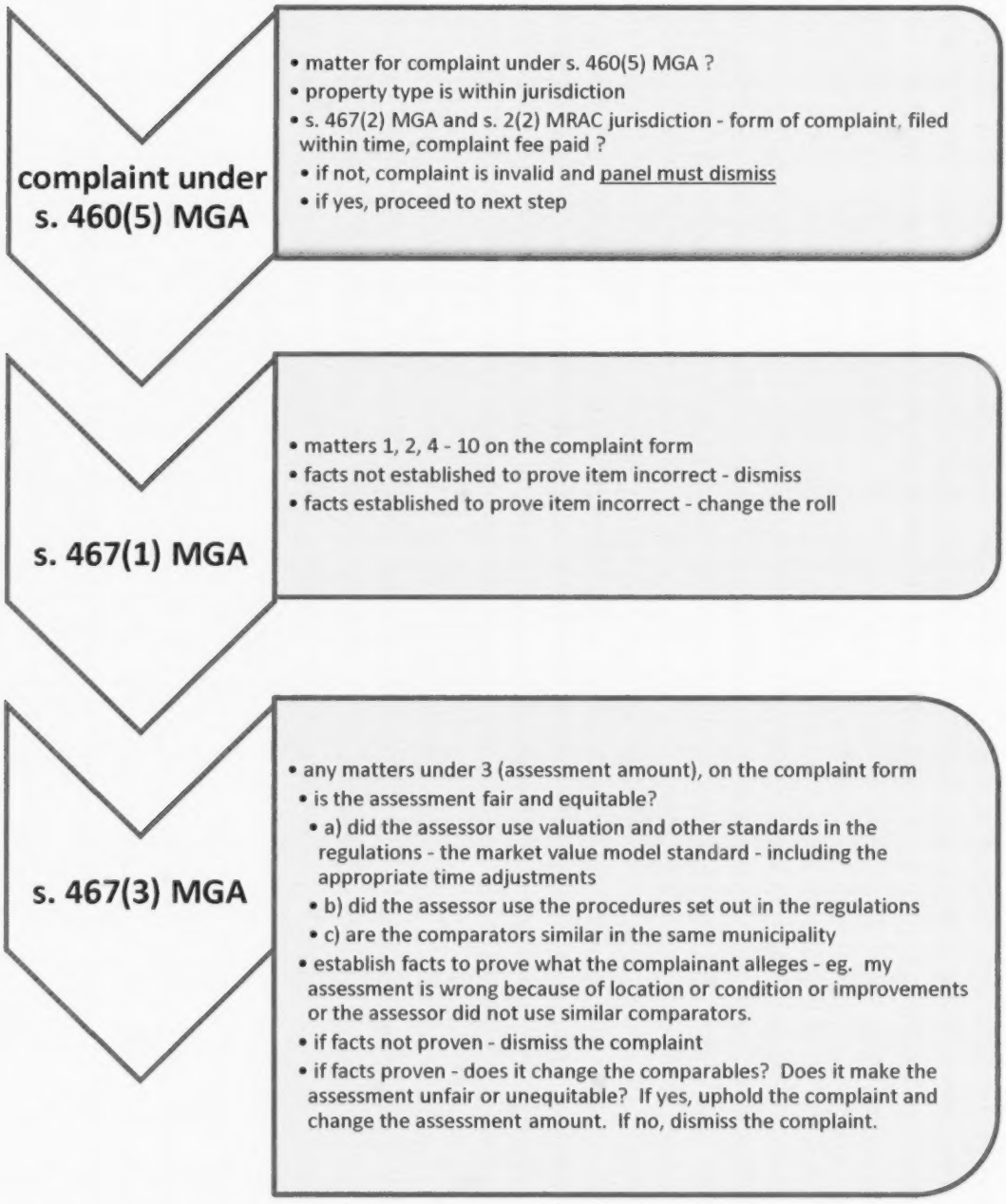

complaint under s. 460(5) MGA
• matter for complaint under s. 460(5) MGA ?
• property type is within jurisdiction
• s. 467(2) MGA and s. 2(2) MRAC jurisdiction - form of complaint, filed within time, complaint fee paid ?
• if not, complaint is invalid and panel must dismiss
• if yes, proceed to next step
s. 467(1) MGA
• matters 1, 2, 4 - 10 on the complaint form
• facts not established to prove item incorrect - dismiss
• facts established to prove item incorrect - change the roll
s. 467(3) MGA
• any matters under 3 (assessment amount), on the complaint form
• is the assessment fair and equitable?
• a) did the assessor use valuation and other standards in the regulations - the market value model standard - including the appropriate time adjustments
• b) did the assessor use the procedures set out in the regulations
• c) are the comparators similar in the same municipality
• establish facts to prove what the complainant alleges - eg. my assessment is wrong because of location or condition or improvements or the assessor did not use similar comparators.
• if facts not proven - dismiss the complaint
• if facts proven - does it change the comparables? Does it make the assessment unfair or unequitable? If yes, uphold the complaint and change the assessment amount. If no, dismiss the complaint.

Figure 3 – Sample - Assessment Review Board Decision Making Model on Residential Property

As you can see from the chart, an ARB begins the decision making process as soon as a complaint is received by the municipality. The first thing an ARB must deal with is whether they have jurisdiction to hear the complaint. The legal tests that must be applied to every complaint are the same, and if the complaint fails any of the legal tests with respect to the filing requirements, legislation states that it must be dismissed.

So let's look a little closer at what those filing requirements are, and what board members should be looking for when determining whether the board has jurisdiction to hear the matter(s).

In order to file a complaint about an assessed property, the complainant must do so in accordance with **section 460 of the MGA. Section 460(2)** states that the complaint must be in the form prescribed in the regulations. The complaint form is contained in **Schedule 1 of MRAC**, and is therefore a regulated document. If completed correctly, it will meet the filing requirements of **section 460**.

Issue 1: Is the complaint filed in accordance with the regulations?

Legal Test: Is the complaint on the regulated form? **s. 460(2) MGA, Schedule 1 MRAC**

If No – Dismiss complaint as prescribed in **s. 2(2) of MRAC, s. 18(2) MRAC**

If Yes – move to next step.

*(if a complaint is not filed on the prescribed form, is it automatically invalid?)

Legal Test: Was the complaint fee paid at the time the complaint was submitted? **s. 460(2) MGA**

If No – Dismiss complaint as prescribed in **s. 2(2) of MRAC, s. 18(2) MRAC**

If Yes – move to next step.

*(if a complaint fee was not included with the complaint, is it automatically invalid?)

Issue 2: Was the complaint filed on time?

Legal Test: Was the complaint filed by the date specified on the municipality's assessment notice, and what legislation may have an effect on that date? **s. 309(1)(c) MGA, s. 284(3) MGA, s. 605(1) MGA, s.3(1) Interpretation Act**

If No – Dismiss complaint as prescribed in **s. 467(2) of the MGA**.

If Yes – move to next step.

*(does the Interpretation Act factor into whether the complaint was filed on time?)

Issue 3: Is the property type within the boards' jurisdiction to hear?

Legal Test: Does the board have jurisdiction to hear the complaint? **S. 460.1 MGA**

If No – Send complaint to the proper board to hear. **S. 460.1 MGA**

If Yes – move to next step.

Issue 4: Are the matter(s) for the complaint identified?

Legal Test: Are the matter(s) for the complaint indicated on the complaint form? **s. 460(5) MGA**

If No – Dismiss complaint as prescribed in **s. 2(2) MRAC, s. 18(2) MRAC**

If Yes – move to next step.

Issue 5: Has the complainant provided the information required?

Question: Has the complainant complied with section **460(7) of the MGA**?

If No – dismiss complaint as prescribed in section **467(2) of the MGA**.

If Yes – move to next step (merit hearing).

As you can see, a board has many things to consider with respect to the validity of complaints that are filed. The clerk of the board may point out some of these issues; however, it is the responsibility of the panel to check these issues on every complaint. It is important for you to remember that only a panel of the board can make a decision on these issues – not a clerk or other ARB staff.

The issues listed above are considered "administrative" matters and may be dealt with by a one member panel of the board. **Part 3 of MRAC** dictates the process that must be followed if a one member panel is to hear and decide on any matter. Please note that the timelines for hearings on administrative matters are different than those for merit hearings.

Is it necessary to document these pre-hearing decisions in the final decision of the board? Maybe. If a complaint has been filed in accordance with the regulations, it is not necessary to document these details; however, if a complaint is to be dismissed on an administrative matter, this decision must be in writing and in accordance with the MGA and MRAC.

At the merit hearing, you need to be aware of the regulations with respect to the evidence that has been disclosed prior to the hearing, and the evidence that is presented at the hearing. An ARB must not hear any issues in support of a matter that has not been identified on the complaint form. **s. 5(1), 9(1), 22(1) and 34(1) of MRAC**.

Assessment Review Board Decision Making Model

To assist board members when making a decision, a decision making model used by the Municipal Government Board can be found in the "Handouts" section of your binder.

Burdens of Proof and the Standard of Proof

When the panel is making its final decision, it must know and consider which party had the obligation to bring enough evidence to convince the panel in its decision. The panel must also know how much evidence is required to convince the panel. The courts call these terms the legal burden of proof and the standard of proof.

Each party who alleges some set of facts or circumstances before the panel has the obligation or burden to prove what it alleges. This is called the "evidentiary burden of proof". For example, if a complainant alleges the repairs to their roof will cost $9,000.00, they must prove that cost to the panel. They prove the cost by bringing evidence in the hearing, such as the written estimate from a window supplier or the verbal testimony of the estimator from the window supplier. Sometimes the other party will agree and the

proof comes from the agreement of the parties. For example, the assessor may agree with the complainant that the windows will cost $9,000.00 to repair; then there is no written estimate or witness testimony is required.

A second burden of proof is the "legal burden of proof". The party who initiates the case (complainant or respondent) carries the obligation (or burden) to convincingly prove its case in order to obtain the outcome it seeks. The legal burden of proof is measured at the end of the case, using all the evidence brought by all the parties. This means the party starting the case can use its own evidence and any evidence from the other party that helps to demonstrate everything the law requires the complainant to prove.

In 2009 the Supreme Court of Canada clarified for everyone that the "standard of proof " the ARB must apply in a civil case is the balance of probabilities. ARB cases are civil cases; therefore the balance of probabilities is the standard of proof before the ARBs. This means the panel considers all the evidence at the end of the hearing and decides whether the party who started the case has proven their case on a balance of probabilities (sometimes stated as "more likely than not" or "fifty percent plus one".

Weighing the Evidence and Making Findings of Fact

The panel weighs the evidence at the end of the hearing and makes any required findings of fact. A panel does not have to weigh the evidence if the parties agree to the fact or if the evidence about the fact is undisputed (evidence from one party is not contradicted by the other party); the panel needs only confirm the fact.

Where the parties disagree about the fact and call competing evidence, the panel must sort through the evidence and assess its value or priority in assisting the panel to find the fact. This is a common occurrence when dealing with competing experts. Some tips and questions on weighing the evidence include:

- prefer direct evidence (first hand) over circumstantial (proven by indirect means)
- decide if corroboration is required and if so does it exist
- be clear about the purpose of the evidence – what is intended to prove
- who brought the evidence – has the party met its evidentiary burden
- how does the evidence intertwine with the other evidence on this point
- how does the oral evidence compare to the documentary evidence
- is the party attempting to prove a fact using only hearsay evidence
- how do the various pieces of evidence on this point compare
- which witness has more qualifications
- which witness had the most direct view or participation
- which witness took notes at the time

When dealing with competing experts consider:

- the qualifications of the experts
- which expert has the most direct education and experience
- which expert has the best experience
- which expert used the most similar process to the one under consideration
- which expert used the most timely information
- which expert used information most similar to the information in the assessment
- how did the experts perform their tests or research
- which expert is best able to explain their opinion and the basis for the opinion.

Decision Making Tips

- bridge gaps to consensus
- use a structure for decision making - same for all panels
- discuss the process and the merits each time
- remember-it's all about the decision not the panel or staff: "don't take it personally"
- ground the decision in legislation
- deal with one issue at a time instead of everything together
- sort evidence by issue and legal tests
- use evidence evaluation tools
    - agreed
    - uncontested
    - similar
    - contested
- apply code of conduct, if required, to resolve collegial disagreements among the panel
- be collegial
- express curiosity rather than defensiveness
- work to the result not from the result
- do not ask a panel member to defend a personal decision made during decision making - rather, re-examine the pieces in decision making and the evidence and legislation. If the panel member persists in the dissenting decision, the panel member is able to more clearly express the reasons for the dissenting opinion in a written dissent.

Decision Writing

A Written Decision Is...

A written decision is the method of communicating the decisions and reasons of the panel to the parties. It is the voice of the panel in written format. The quality of the decision reflects the quality of the decision making process. A panel cannot clearly write a decision it has not made; do not use the decision writing process as a substitute for decision making. Panels issue written decisions to provide clarity and certainty about their decisions.

Just as different panels would **speak** their decisions in different ways, so will panels write their decisions differently. Although Alberta Municipal Affairs cannot expect that every decision will be identical, it can expect that decisions will follow a consistent format and contain consistent information. The decision should be identifiable as an assessment decision from the quality and general format, not from the use of boilerplate terminology.

Why ARB's Write Decisions?

- to explain
- to persuade
- to inform
- to educate
- to meet the statutory requirement
- to prevent arbitrary decisions

Who do Panels Write For?

- the complainant
- the respondent
- assessors
- professionals in the industry
- assessment organizations and groups
- other panels
- the courts
- the department and future legislators
- the public.

What Defines a Well Written Decision?

A well written decision:

- meets legislative requirements
- is published within the mandated timelines
- clearly states the questions/matters the panel will address
- identifies and explains the law and policy applicable to each issue
- explains how the panel interpreted the legislation and policy and applied it to the facts of the case
- is clear, succinct and understandable
- has a structure and a logical flow
- can be implemented without further clarification
- uses plain, everyday language where-ever possible and where not, uses and explains terms in a consistent manner
- uses headings, tables of contents, bullets, addendums, summaries, lists and similar tools to enhance the readability of the decision
- is accurate in spelling, names, quotes and references, grammatically correct, logical.

A well written decision also:

- demonstrates the panel considered the information and arguments put before it
- reveals the panel heard and weighed the evidence before it, showing how it made findings of fact relevant to the questions
- reflects the expertise of the panel in its reasons and considerations
- where there is conflicting relevant evidence, shows how the panel resolved the conflicts and which evidence it relied upon and why
- shows the panel used a logical, orderly process to make its decision and that each decision flows from and melds with the previous decision and leads to a logical conclusion that resolves the matters
- makes the panel's decision-making thought process clear and understandable.

Basic Pieces of a Written Decision

Sections 13 and 25 of MRAC set out the requirements for an ARB decision which include:

- a brief summary of the matters or issues contained on the complaint form
- the ARB's decision on each matter or issue
- the reasons for decision, including any dissenting reasons
- any procedural or jurisdictional matters that arose during the hearing and the ARB's decision on each.

The typical pieces of a well written decision include the following. A panel need not use these labels and may change the order to make the most sense for a particular case. The amount of time the panel has to write the decision will naturally affect how extensive it makes each section.

Nature of Application/Introduction

- identify the parties, relevant statutory provisions, subject matter and what is being sought (who, what, when, and where)
- state in own terms (versus "pleadings")

The Issue or Issues

- the matters raised in the complaint
- identify at outset (part of introduction or separate)
- guidepost to what is relevant

Legislative Tests

- drawn from the Act or Regulations (both MRAC and MRAT can apply)
- identify the tests the panel applied
- usually included in the Analysis section or stand alone section

Positions of the Parties

- may not require separate section
- do not regurgitate submissions, just summarize
- make reference to arguments not expressly considered by the panel and why those arguments were not addressed
- usually included in the Analysis section or stand alone section

Relevant Facts

- not the evidence but findings of panel
- decide on logical order or structure (chronological, by subject, etc.)
- dealing with conflicting testimony (credibility)
- documentary evidence
- only the relevant facts (may want to allude to irrelevant testimony)
- ensure accuracy (ire of parties and prejudice on appeal)
- usually included in the Analysis section or stand alone section

Reasons

- for factual findings
- for any interpretations of the legislation or MRAC (e.g. the meaning of "complete" if not defined)
- for reaching the conclusions reached by the panel (we conclude <u>because</u> …)
- usually included in the Analysis section or stand alone section
- some things to avoid: "leap of faith" (i.e., no real explanation); "cut and paste"; overuse of precedent; extensive quotations

Reasons / Analysis – An Alternate

- essence of reasons: why was the decision reached?
- logical progression (conclusion appears obvious from facts and discussion of legal principles)
- includes legislative tests, relevant facts, reasons
- some things to avoid: "leap of faith" (i.e., no real explanation); "cut and paste"; overuse of precedent; extensive quotations
- may be a combined section incorporating Reasons, Legislative Tests, Relevant Facts, and Positions of the Parties

Conclusion

- succinct statement of decision on the appeal
- may want to have summary for each issue in longer decisions and a case conclusion of all the issues

Order

- clear statement of the directions and times given to the parties to implement

Sample Decision Template for Assessment Review Boards

Assessment review boards must issue their decisions, in writing, within 30 days from the last day of the hearing, or before the end of the taxation year.

Panels can ease the writing obligation by using a standard structure for their decisions which prompts them to provide certain information in every case. One such sample might be the one on the following page.

ORDER No. 0015444

DECISION
BEFORE THE (LOCAL/COMPOSITE) ASSESSMENT REVIEW BOARD
On _____

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT, STATUTES OF ALBERTA 2000, CHAPTER M- 26.

AND IN THE MATTER OF THE ASSESSMENT COMPLAINT

BETWEEN:

_____ Complainant

AND:

_____ Respondent

Topic: (type of complaint)
Property: (address)
Tax Year: _____
Assessment: $_____

Matters Identified on the Complaint Form: (the matters are checked)

Complaint Topic	Matters from sec. 460(5) MGA	Decision	Reasons	Any Dissenting Reasons?
	1. the description of the property or business			
	2. the name or mailing address of an assessed person or taxpayer			
	3. an assessment			
	4. an assessment class			
	5. an assessment sub-class			
	6. the type of property			
	7. the type of improvement			
	8. school support			
	9. whether the property or business is assessable			
	10. whether the property or business is exempt from taxation			

Overview of the Property and Initial Assessment:

The property is ___(description)_____. The property is assessed in _____ condition for an assessed value of $_____.

ISSUES (use the ones you need)

1. Is the _____(item 1, 2, 4 – 10) correct?

2. Is the subject property fairly and equitably assessed? (see section 467 of the MGA)

3. Can the ARB deal with Mrs. Green's complaint about _____ (e.g. being over taxed)?

PROCEDURAL AND JURISDICTIONAL MATTERS ARISING DURING THE HEARING

Identify the matter, what the ARB ruled and why. If none raised, say none raised or delete this section from the decision.

DECISION

Under section 467(1) the ARB changes the assessment roll as follows: OR the ARB finds no change is required to the assessment roll. As a result, the complaint is granted / dismissed.

[The assessment value is set at $_____.] [The ARB has no jurisdiction to hear _____.] Use pieces that fit the case.

Summary of Complainant's Position

_____ complained that _____. The complainant asked that the property assessment be set at $_____.

Summary of the Respondent's Position

The Respondent stated that the assessment set by the ARB was correct or / and fair and equitable.

Summary of the Evidence on the Issue of _____: (repeat for each issue)

The complainant's evidence included:

1. Her testimony that
a. _____

2. _____ testimony as the expert appraiser and his appraisal report showing the current market value of the property at _____ is $_____.

3. Documents showing _____

The Respondent's evidence included:

1. documents showing

2. the assessor's testimony that _____.

REASONS and LEGISLATION

Issue _____ – Assessment Amount

Under the *Municipal Government Act*, the ARB cannot change an assessment which is fair and equitable.

MGA 467 (3) says

> *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*
>
> *(a) the valuation and other standards set out in the regulations,*
>
> *(b) the procedures set out in the regulations, and*
>
> (c) *the assessments of similar property or businesses in the same municipality.*

The ARB examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the ARB that the assessment is not fair and equitable. The ARB reviews the evidence on a balance of probabilities. If the initial assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the ARB will not alter the assessment. Within each case the ARB may examine different factors, depending on what the complaint raises as concerns.

In this case, we first examined the evidence about the condition of the property. _____ We find the property to be in _____ condition.

Next, we looked at _____. We examine the comparables provided by both parties. Under the *Matters Relating to Assessment and Taxation Regulation*, an assessment must be based on the market value of the property on July 1 of the year before the assessment. In this case the date is July 1, 2009, this being a 2010 assessment.

> *1 In this Regulation,*
> *(f) "assessment year" means the year prior to the taxation year;*
> *2 An assessment of property based on market value*
> *(a) must be prepared using mass appraisal,*
> *(b) must be an estimate of the value of the fee simple estate in the property, and*
> *(c) must reflect typical market conditions for properties similar to that property.*
>
> *3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.*
>
> *6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.*

The Complainant _____
The Respondent presented pre-valuation comparables that support the assessment. _____. There is no evidence of merit to vary the assessment further.

Issue #2_____ – Overtaxed

The ARB has no jurisdiction to hear a complaint about a property tax because the Act does not allow it.

_____ did not raise the matter in her complaint and section 5(1) of the Matters Relating to Assessment Complaints Regulation says this ARB has no authority to hear matters not marked on the complaint.

Dated at Edmonton, Alberta this 10th day of November, 2010 and signed by the Presiding Member on behalf of all three panel members who agree with this decision.
John John, Presiding Member
LARB/CARB

Tips for the Author

- use the outline and notes from the decision making session to create the outline, findings, reasons and results of the decision
- flesh out the outline so it makes sense to a reader – use bullets or full sentences or a combination
- insert headings to help the reader
- check the content against MRAC to ensure you have everything included
- compare the decision to the style guide to see that the style guide has been followed and if not make changes
- once the first draft is complete, leave it overnight if possible before beginning to edit
- read the decision again – does it make sense? Does it accurately set out the decision of the panel or majority? Is it clear? Begin to edit until satisfied.
- respect that writing is difficult work, often done in a time crunch.

Reviewing a Decision in Draft

Either one of the panel members or someone else may write the decision after the panel has made the decision and is able to convey its reasons.

A best practice for decision writers is to have someone else review the draft decision. The following tips can assist a person to collaboratively review a decision drafted by someone else.

Tips for Commenting on a Decision Written by Someone Else

- respect the final decision but look for the way the written document conveys that decision
- look at the decision from the complainant`s perspective – will the complainant understand the decision and reasons for decision?
- provide feedback on accuracy, clarity, understand ability, logic, flow, structure
- point out where the decision does not include the pieces required by MRAC
- provide suggestions on grammar but respect the final choice may rest with someone else
- compare the decision to any style guide adopted by the ARB to see that the style guide has been followed and if not make suggestions for improvement
- point out gaps in logic or flow but leave the final alteration to the writer and final choices to the panel
- respect that writing is difficult work, often done in a time crunch, and that your choice of words may not be the same as the writer`s

Costs and Penalties

Part of the decision making obligation of panels can be to award costs or penalties for actions or positions taken during the process. Each ARB may have different powers and different legislative requirements.

A CARB and the MGB have authority to award costs under section 52 of MRAC. A LARB does not have authority to award costs. Under section 52of MRAC:

- any party to a hearing can apply to have the CARB or MGB award costs
- a party must apply no later than 30 days after the hearing ends
- when deciding whether to award costs after an application, the CARB or MGB may consider
    - whether there was an abuse of process
    - whether the party applying for the costs incurred additional or unnecessary expenses as a result of an abuse of process.
- the CARB or MGB can decide on its own initiative and at any time to award costs
- the panel can only award costs set out in Schedule 3
- MRAC dictates who pays the costs
- Schedule 3 states a CARB or MGB may award costs if it determines a hearing was required to determine a matter that did not have a reasonable chance of success.

Important Notes:

- Before a panel decides to award costs or how much, it must (as part of fair process) allow each party to present its evidence and arguments about costs.
- Costs under section 52 and Schedule 3 of MRAC are punitive in nature.
- MRAC does not define abuse of process but Schedule 3 outlines the types of conduct that might guide a panel to determining whether an action is an abuse of process.
- Generally a panel would not award costs if the complainant withdraws a matter during the disclosure process or if the complainant withdraws a matter after disclosure but before the hearing begins.
- MRAC does not define reasonable chance of success in Schedule 3 and panels will have to decide what that phrase means. Generally the mere fact the complaint was not successful does not mean the complaint did not have a reasonable chance of success.

Tips When Dealing With Costs or Penalties

- Determine if the legislative standard is mandatory or discretionary
- If the panel has a discretion to set or alter the costs or penalties, consider all the evidence and arguments about what circumstances exist for lesser, higher, prescribed or no costs or penalties
- Determine what meaning to give to words like "abuse of process" – is this mere inconvenience or extra work or time? Is it intentional conduct which undermines the fairness of the process; is it something else?
- Consider any information from the parties that might excuse or justify the action or position
- Consider any information showing the other party has contributed to the offending action
- Consider any information about prejudice arising from the offending action
- Consider what will be fair to the other party in all the circumstances
- Take a balanced approach – cases will arise which are better or worse than this case.

Exercise #7 - Decision Making & Writing

The following case study is based on an actual complaint that was filed in the Municipal District of Foothills No.31. In this exercise, you will only be dealing with non- assessment matters. This case study will be continued in the Principles of Assessment course to include assessment related matters.

To simulate a panel of the board, you will be separated into groups of three and asked to review the issues and make decisions on each of those issues using the decision making model. You will then write your decision on each of these matters keeping in mind the legislated requirements for decisions.

Instructions:

- Each member of your panel should read the attached case study carefully.
- As a group, make your decisions on each issue and remember to include:
  - the issue(s) that must be decided upon.
  - the legislation (if any) that pertains to the issues.
  - any principles of natural justice (if any) that may need to be considered for the issues
  - the appellant's arguments
  - the respondent's arguments
  - your findings of fact, and reasons for your decision on each issue
- Write your decisions on each issue, and review for content.
- Select a spokesperson from your "panel" to report to the group

*Remember, if there is a dissenting decision on any issue, that dissent must be included in the overall decision.

The Case to Be Decided

Cargill Limited, represented by Wilson Laycraft - Complainant
and
Municipal District of Foothills No. 31, represented by Brownlee LLP - Respondent

BACKGROUND/SUMMARY:

The Complainant owns and operates the Cargill Foods High River beef processing plant. The Complaint is against the property assessment for Taxation Year 2010 which is comprised of three parts:

The fully integrated beef processing plant has capacity to process 4,500 head of live cattle per day. Approximately 2,000 workers, operating in two shifts, operate the plant. The facility reduces live cattle to dress carcass form as well as processing and packaging certain by-products such as edible and inedible components and hides. There is significant refrigerated freezer and cooler space within the plant for storage and preparation of finished product for shipping to customers. Much of the handling processes are fully or partially automated.

Originally constructed in 1989, the plant has been expanded over the years to its current size and capacity. The plant has a floor area of over 430,000 square feet. Ancillary buildings on site add almost 29,000 square feet of building area. The entire plant utilizes about 60 acres of the 83.02 acre parcel. The property is situated on the east side of Alberta Highway 2A, about three kilometres north of the Town of High River.

PRELIMINARY ISSUES:

The Respondent objected to the Composite Assessment Review Board (CARB) panel as constituted, making application for CARB Presiding Officer W. Kipp to recuse himself from this hearing. Grounds for the application were that the Respondent has a reasonable apprehension of bias as follows:

Mr. Kipp is involved in subsisting litigation (Genesis Investors v. Genesis Land Development Corp.). Brian Gettel, witness for the Respondent, is involved in the same litigation supporting an adverse interest.

Mr. Kipp has been retained by the solicitor for Cargill in the past, and has appeared in at least one MGB (Municipal Government Board) assessment hearing (Corridor Pipeline) as an expert witness for the solicitor for Cargill.

Mr. Gettel, witness for the Respondent, had pointed out to counsel for the Respondent, that he and Mr. Kipp were both involved in the "Genesis" litigation matter, each acting for different parties to the litigation. Other than some speculation regarding the litigation and the roles of Mr. Gettel and Mr. Kipp, counsel for the Respondent had no further information. Counsel conceded that the matter had not been fully explored.

With respect to the involvement of Mr. Kipp with the solicitor for the Complainant, counsel for the Respondent indicated that Mr. Kipp had acted as an expert witness for the solicitor at a Municipal Government Board hearing regarding as assessment of the "Corridor Pipeline." There was no indication whether or not the Corridor Pipeline appeal has any similarities to this Cargill complaint. Any present or past link with either party could lead a reasonable person to think that there could be a reasonable apprehension of bias.

Counsel for the Respondent cited cases where apprehension of bias had been an issue. Two Municipal Government Board (MGB) cases were mentioned. In one case, a former MGB member was appearing before that board as a witness. That was not found to be a situation where there was a reasonable apprehension of bias. In the second situation, where Board members were sitting on a case where there were similar issues to cases where those members had previously sat and decided, there was no finding of an apprehension of bias.

Counsel for the Complainant pointed out that the passage of time is a very relevant factor to consider. Further, just because a board member has sat on a prior case involving similar subject matter does not lead a reasonable person to an apprehension of bias. From a practical perspective, the community of appraisers is quite small. Reference was made to the "Boardwalk" case heard by the Alberta Court of Appeal a number of years ago. In Boardwalk, a judge was asked to step down because that judge had prior dealings with the same tax consulting company that was representing a party at the appeal hearing. Different individuals were involved and the judge had resided in a different city. He added that Mr. Kipp had not performed any work for his law firm since being appointed to the MGB and that there is no present relationship that would give rise to an apprehension of bias. By his recollection, any work Mr. Kipp had done on the Corridor Pipeline case had been four or five years old so time had well passed for any reasonable apprehension of bias. With regard to the Genesis case, it appeared from the Respondent's comments that Mr. Kipp was playing a role as an expert in that case. There would therefore not be a relationship between him and Mr. Gettel. In this current situation, there was no suggestion that Mr. Kipp had any past or present link with the Complainant, Cargill. Simply because Mr. Kipp had performed work for a law firm in the past does not give necessarily to reasonable apprehension of bias.

The duty of the Board, not only Mr. Kipp but also for the locally appointed members is to make a decision independent of all municipal influences. Board members must approach the case objectively and bring their own independent analysis.

In closing, Counsel for the Respondent stated that cases involving judges and allegations of reasonable apprehension of bias should be viewed somewhat differently than at this level (the Composite Assessment Review Board level).

The Respondent noted that land had not been identified on the Complaint Form (Exhibit 1) as an issue.

For that reason, land would not be something this Board could deal with under Section 9(1) of the Matters Relating to Assessment Complaints Regulation (Alberta Regulation 310/2009) (MRAC).

The Complainant informed the Board that Mr. Beatty, the appraisal witness for the Complainant, had undertaken a market valuation of the real property which included both land and buildings. It would therefore be up to the Board to decide whether land is an issue in the complaint.

The Respondent wanted clarification of the revised assessment being requested by the Complainant. On the Complaint Form (Exhibit 1), the requested assessment was $75,000,000. In evidence submitted to the CARB, the request was for an assessment of $50,353,667. As in the prior issue, the CARB's jurisdiction is prescribed by 9(1) of MRAC and that the value set out on the Complaint Form should be the one to consider at the hearing. The intent of the new rules and form for property assessment complaints was to get early disclosure regarding the issues so that the parties knew what the complaint was about and thus, be able to proceed accordingly. Given the significant difference between the number on the Complaint Form and the number in evidence, that is more than was intended by the legislators when they passed amendments to the Municipal Government Act and its related regulations such as MRAC.

On behalf of the Complainant, Counsel pointed out the area on the filed Complaint Form where it was stated that the Complainant was seeking opinions from outside experts. The $75,000,000 number on the form was a preliminary number only. Prior 2010 CARB decisions from a number of jurisdictions across the province had dealt with this matter and the requests on Complaint Forms were accepted as preliminary numbers based on an initial analysis. The CARB should not be locked in to a specific request such as $75,000,000. There could be findings by the CARB that the proper assessment lies between the current assessment and the requested assessment and the CARB would have its hands tied if it was bound by one number or the other.

The Respondent informed the CARB that it was their understanding that other CARB decisions regarding the weight to be given the form and its contents had gone both ways – some in favour of the Complainant and others in favour of the Respondent.

It was the Respondent's position that the rebuttal report filed by Mr. D'Easum (Exhibit 5A) was not rebuttal evidence. It was merely new evidence that could have and should have been properly disclosed during the required evidence disclosure time period. Section 8(2)(a) of MRAC sets out clear rules on disclosure and that section must be rigorously followed. It is improper for a party to put in its case through rebuttal when it should have been done in the initial filing. In the case of the D'Easum rebuttal report, it does not respond to any evidence that was put in by the Respondent. It simply attaches a number of documents without explanation or reference to Respondent evidence. MRAC requires that rebuttal evidence be in sufficient detail to allow the Respondent to respond or rebut the evidence at the hearing and this document does not do that.

The Complainant maintained that the D'Easum rebuttal report was responsive to what is in the Driscoll report (Exhibit 4D). Links between the content of the Driscoll report and the D'Easum rebuttal report were pointed out to the CARB by reference to specific pages in the documents.

References and Resources

Foundation of Administrative Justice Certificate Program Courses www.FOAJ.ca

Administrative Decision Writing, A.C.L. Sims, February 14, 1994 C.I.A.J. Conference http://www.ciaj-icaj.ca/

Reasons for Decision by ARB, Kerans, J., February, 1994 C.I.A.J. Conference

An Editing Checklist, Maryhelen Vicars, February, 1994 C.I.A.J. Conference

A Few Chose Verses from the Plain English Bible, Maryhelen Vicars, February, 1994 C.I.A.J. Seminar "The Decision Writing Process"

Plain English for Lawyers (2nd edition), Richard Wydick, (1985) Carolina Academic Press

Practice and Procedure Before ARBs, MaCaulay & Sprague

Citation, Canadian Citation Committee, (2001) www.lexum.umontreal.ca/citation/en/index.html

Hallmarks of Quality Appeal Division Decisions, (2001) B. C. Workers' Compensation Reporter, Vol. 17, Appeal Division Decision No. 33

Standards for the Preparation, Distribution and Citation of Canadian Judgements in Electronic Form, Canadian Judicial Counsel (1996) www.cjc.gc.ca

Powers and Procedures for ARBs in Alberta (December, 1999) Alberta Law Reform Institute

Plain Language, Clear and Simple (1991) Canada Communication Group - Publishing

Advising the Board: The Scope of Counsel's Role in Advising ARBs, Murray Rankin and Leah Greathead, CDN. Journal of Administrative Law & Practice 7 C.J.A.L.P. 29

Preparing to Write Clearly, (1996) Harper and Associates, B.C. Council of ARBs http://www.bccat.net/

Fact Finding and the Judiciary, Judge Gerald T. G. Seniuk and John C. Yuille, Ph. D., (1997) C.C.A.T. Conference

Behind Closed Doors: The Process of Making Decisions, Innis Christie (1997) C.C.A.T. Conference http://www.ccat-ctac.org/en/conferences/papers/index.php

All About Decision Letters: WCB Style for Decision Letters (1999) Sims Group http://www.simsgroup.com/

Arbitrator Training Materials Canadian Motor Vehicle Arbitration Plan www.camvap.ca

Handling the Evidence from Pre-Hearing to Final Reasons, Justice J.I. Laskin ON. C.A. (2002) C.C.A.T. Conference

The Hearing is Over: Writing Languages in Plain Language, David C. Elliott http://www.davidelliott.ca/

Black, Henry Campbell. *Black's Law Dictionary*, Abridged Fifth Edition, Set-Paul, West Publishing Co., 1983.

Blake, Sara. *Administrative Law in Canada*, Toronto, Butterworths, 1992.

Canadian Bar Association. Report of the Task Force on the Independence of Federal ARBs and Agencies in Canada, Ottawa, 1990.

Canadian Journal of Administrative Law Practices

Jones and De Villars. *Principles of Administrative Law*, Toronto, Carswell, 1994.

Law Reform Commission of Canada. *Independent Administrative Agencies*, Working Paper 25, Ottawa, Minister of Supply and Services Canada, 1980.

Macaulay, R.W. and Sprague, J.L.H. *Practice and Procedure Before ARBs*, Toronto, Carswell, 1994.

Reid, Administrative Law *Administrative Law: An Overview*, document prepared by the Legal Services Sector of the Department of Justice and modified for use by the National Transportation Agency.

Members' Handbook, prepared by the Immigration and Refugee Board.

Members' Orientation Book, prepared by the Canadian Radio-television and Telecommunications Commission.

Powers and Procedures of ARBs Alberta Law Reform Institute Consultation Memorandum No. 13, Sept 2008 Edmonton.

A User's Guide to Legislation

From Alberta Justice and Solicitor General website.

Statutes of Alberta: annual volumes

Each year the public acts and private acts enacted by the Legislature that year (bills that receive Royal Assent) are published by the Alberta Queen's Printer in a hard-cover volume. The volume also contains reference materials. The annual volumes of the *Statutes of Alberta* are the authoritative source for interpreting and applying Alberta's acts.

Public acts include entirely new public acts, public amendment acts, repeal acts and appropriation acts. Private acts are brought forward (or "petitioned") by Members of the Legislative Assembly, and do not affect the population as a whole.

The annual volume contains:

- a table of contents that lists the acts by chapter number
- an alphabetical list of acts
- public acts enacted in that year
- private acts enacted in that year
- reference materials.

The first page of each act contains the following information:

- the bill number under which the act was introduced in the Legislative Assembly (in the upper left hand corner)
- the title of the act
- the chapter number assigned to the act
- the date on which the act was given Royal Assent.

Statutes of Alberta: loose-leaf

The Alberta Queen's Printer also publishes a 15-volume loose-leaf consolidation of the public acts, excluding appropriation acts. These volumes are updated as soon as possible after new acts are enacted or amendments come into effect. Volumes 1 to 15 consolidate the public acts enacted by the Alberta Legislature. Volume 15 also contains those amendment acts from the Revised Statutes of Alberta 2000 that are still awaiting proclamation, RSA 2000 Schedules A to D, proclamation tables, and the Table of Public Statutes (printed on pink paper).

The loose-leaf version is an unofficial consolidation. The original acts, in the hard cover volumes of the Revised Statutes of Alberta 2000 and the annual *Statutes of Alberta*, should be consulted for all purposes of interpreting and applying the law.

The Alberta Gazette Part II

Regulations filed under the *Regulations Act*, except those exempted from publication under that act, are published in Part II of The Alberta Gazette within a month of being filed. The Gazette is available from the Alberta Queen's Printer.

Other Formats

Alberta Statutes and Regulations are also available in pamphlet form, and on the Alberta Queen's Printer web site.

How to cite statutes (Acts)

Statutes (Acts) are referred to by their titles. For court and other legal purposes, a complete citation would consist of the title of the act followed by a reference to the more recent of

- the most recent statute revision in which that act was included
- the year in which the act was enacted (received Royal Assent)

plus the chapter number of the act.

Entirely new public acts are given alpha-numeric chapter numbers; other acts are numbered Chapter 1, 2, 3 etc.

The statute revision is cited in this form: Revised Statutes of Alberta 2000. This may be abbreviated as RSA 2000.

Years of enactment are cited in this form: Statutes of Alberta, 2002. This may be abbreviated as SA 2002.

Here are some examples of citations of acts:

Cooperatives Act (SA 2001 cC-28.1);

Hospitals Act (RSA 2000 cH-12);

Public Works Amendment Act, 2002 (SA 2002 c21).

How to cite regulations

A regulation may be cited by its title, or as "Alberta Regulation" or "Alta. Reg." or "AR" followed by its number, a slash and the last two figures of the calendar year of the filing of the regulation. For example, the Partnership Regulation may be cited as:

- Partnership Regulation, or
- Partnership Regulation, Alberta Regulation 276/99, or
- Partnership Regulation (Alta. Reg. 276/99), or
- Partnership Regulation (AR 276/99)

Beginning with regulations filed in the year 2000, all four figures of the calendar year are used in Alberta Regulation numbers; for example, Change of Name Regulation (AR 16/2000).

Interpretation Act

Users of the Statutes of Alberta should be aware of the *Interpretation Act* (RSA 2000 cI-8). It sets out various presumptions, definitions, and rules of statutory interpretation and construction that apply to all Alberta acts and regulations. For example, the *Interpretation Act* contains definitions that apply to words and phrases used in all acts, except where an act indicates otherwise.

Reference Materials

Reference aids are placed at the end of the annual volume and in the supplement volume of the loose-leaf statutes. The reference materials included are:

Proclamation Tables - (printed on white paper)

These tables list:

- all enactments brought into force by proclamation
- unproclaimed public enactments
- acts amended by unproclaimed enactments
- acts repealed by unproclaimed enactments
- public enactments that expire on named dates
- public enactments that come into force on named dates.

Table of Public Statutes - (printed on pink paper)

Part 1 of the table shows all acts in the *Revised Statutes of Alberta 2000*, all amendments to those acts, and all other public acts and amendments enacted between December 31, 2000 and the date stated in the first paragraph of the table.

Part 2 of the table shows public acts enacted before December 31, 2000 for which no express repeals have been found, and which were not consolidated in or repealed by the *Revised Statutes of Alberta 2000*.

Table of Private Statutes of the Province of Alberta - (annual volume only: printed on blue paper)

The table shows all the private acts, and amendments to them, enacted up to the date printed under the title of the table.

RSA 2000 Schedules - (loose-leaf statutes)

Schedules A to D to the Revised Statutes of Alberta 2000 are included in the last volume of the loose-leaf statutes.

- Schedule A: Acts Consolidated in RSA 2000
- Schedule B: Acts Omitted from and Repealed by RSA 2000
- Schedule C: Acts Not Consolidated Nor Repealed by RSA 2000
- Schedule D: Table of Concordance

Organization of a Statute (Act)

Preambles

Some acts begin with a preamble. The preamble is part of the act and may be used to interpret the act.

Definitions

Most acts contain a definition section that lists, in alphabetical order, definitions of terms used in the act. The definition section is usually at the beginning of the act. However, definitions that are restricted in their application to a section, part, division or other portion of an act may be at the beginning of that section, part, division or other portion.

Marginal Notes and Section Headers (Side notes)

Marginal notes and section headers (side notes) are not part of the statute and should not be relied on to interpret the act. They are included only for convenience of reference and may be changed editorially whenever appropriate.

Sections, Subsections, etc.

Every act is composed of numbered sections, cited as section 1, 2, 3, etc.

- many sections are further divided into two or more subsections, cited as subsection (1), (2), (3), etc.
- some sections and subsections contain clauses, cited as clause (a), (b), (c), etc., subclauses, cited as subclause (i), (ii), (iii), etc.,paragraphs, cited as paragraph (A), (B), (C), etc., and subparagraphs, cited as subparagraph (I), (II), (III), etc.

Decimal Numbering

The numbering system can be easily understood by regarding each section number as if it were followed by a decimal point and some zeros that are not shown; that is, section 4 can be thought of as 4.0 or 4.00 etc.

In applying the system, only one decimal place is usually needed, so that between sections 4 (4.0) and 5 (5.0) sections 4.1 to 4.9 can be added (4.10 is not used since it is the same as 4.1), for a total of nine sections.

By later amendments, up to nine more sections can be added between any two sections by using two decimal places, for example:

- between section 4 and 4.1, sections 4.01 to 4.09 can be added,
- between sections 4.1 and 4.2, sections 4.11 to 4.19 can be added, and
- between sections 4.9 and 5, sections 4.91 to 4.99 can be added

and in the same manner a further nine sections can be added between any of those sections by using three decimal places.

If it is necessary to add more than nine sections in the same place at the same time, then some of the sections are numbered using an additional decimal place.

The same rules apply to adding new subsections, clauses, subclauses and paragraphs, so that

- subsections are numbered (1.1) to (1.9),
- clauses are numbered (a.1) to (a.9),

- subclauses are numbered (i.1) to (i.9),
- paragraphs are numbered (A.1) to (A.9), and
- subparagraphs are numbered (I.1) to (I.9).

Parts, Divisions

Some acts are divided into numbered parts, cited as Part 1, Part 2, etc. A part may be divided into divisions cited as Division 1, Division 2, etc.

Transitional Provisions

If an act or provision cannot come into force on an intended day without hardship or confusion occurring, the act may contain a transitional provision. Transitional provisions are used to provide for the transition from an earlier act to the act that replaces it, or to phase in how a new or an amending act applies to persons affected by it. A transitional provision may be included in an act if, for example, certain provisions of the previous act will apply for a significant period of time or if the provisions may affect many persons. Transitional provisions are usually located near the end of the act.

Consequential Amendments

Consequential amendments in an act amend other acts that are affected by that act. Consequential amendments are included in the acts as published in the annual volume.

In the loose-leaf statutes and office consolidations, all amendments are incorporated into the amended acts. If an act made consequential amendments to other acts, an editorial note to that effect is included in the consolidated amending act.

Repeal Provisions

Provisions repealing other acts are placed near the end of the act, immediately before the coming into force section.

Coming Into Force Provisions

The section dealing with the coming into force of an act or of provisions of an act is usually the last section of the act. If there is no coming into force provision in an act, the *Interpretation Act* (RSA 2000 cI-8) provides that the act comes into force on the date of Royal Assent. The Royal Assent date is on the first page of each act in the annual statute volume, following the chapter number.

If an act, or a portion of an act, comes into force in a manner other than by Royal Assent, the last section of the act will set out the method. The act, or portion of the act, may come into force on proclamation or on a named future date, or may be deemed to have come into force on a named previous date.

Citations (Historical References)

Each section of a consolidated act is followed by the citation for that section and the citations of any amendments to that section. Citations do not form part of the act. They are added editorially.

Attached Documents:

1. *Complaint Form*
2. *Notice Types*
3. *Complaint Process and timeline for a LARB*
4. *Complaint Process and timeline for a CARB*
5. *Complaint Process and timeline for the MGB*
6. *Process for Administrative Clerks*

The Assessment Review Board Complaint Form - Front

Alberta Government

Assessment Review Board Complaint

Municipality Name (as shown on your assessment notice or tax notice) | Tax Year

Section 1 - Notice Type

Assessment Notice:
- ☐ Annual Assessment
- ☐ Amended Annual Assessment
- ☐ Supplementary Assessment
- ☐ Amended Supplementary Assessment

Tax Notice:
- ☐ Business Tax
- ☐ Other Tax (excluding property tax and business tax)

Name of Other Tax

Section 2 - Property Information

Assessment Roll or Tax Roll Number

Property Address

Legal Land Description (i.e. Plan, Block, Lot or ATS 1/4 Sec-Twp-Rng-Mer)

Property Type (check all that apply):
- ☐ Residential property with 3 or fewer dwelling units
- ☐ Residential property with 4 or more dwelling units
- ☐ Farm land
- ☐ Non-residential property
- ☐ Machinery and equipment

Business Name (if pertaining to business tax) | Business Owner(s)

Section 3 - Complainant Information Is the complainant the assessed person or taxpayer for the property under complaint? ☐ Yes ☐ No

Note: If this complaint is being filed on behalf of the assessed person or taxpayer by an agent for a fee, or a potential fee, the Assessment Complaints Agent Authorization form must be completed by the assessed person or taxpayer of the property and must be submitted with this complaint form.

Complainant Name (if the complainant, assessed person, or taxpayer is a company, enter the complete legal name of the company)

Mailing Address (if different from above) | City/Town | Province | Postal Code

Telephone Number | Fax Number | Email Address

If applicable, please indicate any date(s) that you are not available for hearing

Section 4 - Complaint Information Check the matter(s) that apply to the complaint (see reverse for coding)

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10

Note: Some matters or information may be corrected by contacting the municipal assessor prior to filing a formal complaint.

If information was requested from the municipality pursuant to sections 299 or 300 of the *Municipal Government Act*, was the information provided? ☐ Yes ☐ No

Section 5 - Reason(s) for Complaint **Note: An assessment review board must not hear any issue in support of a matter that is not identified on the complaint form.**

A complainant must:
- indicate what information shown on an assessment notice or tax notice is incorrect,
- explain in what respect that information is incorrect,
- indicate what the correct information is, and
- identify the requested assessed value, if the complaint relates to an assessment.

Requested assessed value

(a) include a statement that the complainant and the respondent have discussed the matters for complaint, specifying the date and outcome of that discussion, including the details of any issues or facts agreed to by the parties, or

(b) include a statement, if the complainant and the respondent have not discussed the matters for complaint, specifying why no discussion was held.

Note: If necessary, additional pages or documentation required to complete this section may be submitted with this complaint form.

Section 6 - Complaint Filing Fee

If the municipality has set filing fees payable by persons wishing to make a complaint, the filing fee must accompany the complaint form, or the complaint will be invalid and returned to the person making the complaint.

If the assessment review board makes a decision in favour of the complainant, or if all the issues under complaint are corrected by agreement between the complainant and the assessor and the complaint is withdrawn prior to the hearing, the filing fee will be refunded.

Section 7 - Complainant Signature

Signature | Printed Name of Signatory Person and Title | Date (yyyy-mm-dd)

Important Notice: Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.

Assessment Review Board Clerk Use Only

Was the complaint filed on time?	☐ Yes	☐ No		
Is the required information included on or with the complaint form?	☐ Yes	☐ No		
Was the required filing fee included?	☐ Yes	☐ No	☐ N/A	Date received:
Was a properly completed authorization form attached?	☐ Yes	☐ No	☐ N/A	
Complaint to be heard by:	LARB	CARB		

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The Assessment Review Board Complaint Form - Back

MATTERS FOR A COMPLAINT

A complaint to the assessment review board may be about any of the following matters shown on an assessment notice or on a tax notice (other than a property tax notice):

1. the description of the property or business
2. the name or mailing address of an assessed person or taxpayer
3. an assessment amount
4. an assessment class
5. an assessment sub-class
6. the type of property
7. the type of improvement
8. school support
9. whether the property or business is assessable
10. whether the property or business is exempt from taxation

Note: To eliminate the need to file a complaint, some matters or information shown on an assessment notice or tax notice may be corrected by contacting the municipal assessor. It is advised to discuss any concerns about the matters with the municipal assessor prior to filing this complaint.
If a complaint fee is required by the municipality, it will be indicated on the assessment notice. Your complaint form will not be filed and will be returned to you unless the required complaint fee indicated on your assessment notice is enclosed.

ASSESSMENT REVIEW BOARDS

A Local Assessment Review Board will hear complaints about residential property with 3 or fewer dwelling units, farm land, or matters shown on a tax notice (other than a property tax notice).
A Composite Assessment Review Board will hear complaints about residential property with 4 or more dwelling units or non-residential property.

DISCLOSURE

Disclosure must include:

All relevant facts supporting the matters of complaint described on this complaint form.
All documentary evidence to be presented at the hearing.
A list of witnesses who will give evidence at the hearing.
A summary of testimonial evidence.
The legislative grounds and reason for the complaint.
Relevant case law and any other information that the complainant considers relevant.

Disclosure timelines:

For a complaint about any matter other than an assessment, the parties must provide full disclosure at least 7 days before the scheduled hearing date.
For a complaint about an assessment - Local Assessment Review Board:
Complainant must provide full disclosure at least 21 days before the scheduled hearing date.
Respondent must provide full disclosure at least 7 days before the scheduled hearing date.
Complainant must provide rebuttal at least 3 days before the scheduled hearing date.
For a complaint about an assessment - Composite Assessment Review Board:
Complainant must provide full disclosure at least 42 days before the scheduled hearing date.
Respondent must provide full disclosure at least 14 days before the scheduled hearing date.
Complainant must provide rebuttal at least 7 days before the scheduled hearing date.

DISCLOSURE RULES

Timelines for disclosure must be followed;
Information that has not been disclosed will not be heard by an assessment review board; and
Disclosure timelines can be reduced if the disclosure information is provided at the time the complaint form is filed. Both the complainant and the assessor must agree to reduce the timelines.

PENALTIES

A Composite Assessment Review Board may award costs against any party to a complaint that has not provided full disclosure in accordance with the regulations.

IMPORTANT NOTICES

Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.

An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

The assessment review board clerk will notify all parties of the hearing date and location.

For more details about disclosure please see the *Matters Relating to Assessment Complaints* Regulation.

To avoid penalties, taxes must be paid on or before the deadline specified on the tax notice even if a complaint is filed.

The personal information on this form is being collected under the authority of the *Municipal Government Act*, section 460 as well as the *Freedom of Information and Protection of Privacy Act*, section 33(c). The information will be used for administrative purposes and to process your complaint. For further information, contact your local Assessment Review Board.

Table 1 – Notice Types

Matters for a complaint s. 460(5) for LARB and CARB	Notice Types								
	CARB res. with 4 or more units and non-res.	LARB res. with 3 or less units and farm land	LARB Tax Notices, not including a property tax notice						
	Assessment notice, incl. suppl.	Assessment notice, incl. suppl.	Business tax, incl. suppl. (tax notice)	BRZ (tax notice)	CR levy (tax notice)	Special tax (tax notice)	Well Drill Equip. (tax notice)	Local Improv. (tax notice)	CAP levy (tax notice)
(a) description of a property or business	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
(b) name and mailing address of an assessed person or taxpayer	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
(c) an assessment	Yes	Yes	Yes (s. 374(1))	Yes (AR89/05)	ref. to assessed value	ref. to asmnt.		ref. to asmnt.	
(d) assessment class (see s. 297(1))	Yes	Yes							
(e) assessment sub-class (see s. 297(2))	N/A (vacant only)	Yes							
(f) "type" of property	Yes	Yes							
(g) "type" of improvement (see s. 284(1)(j))	Yes	Yes							
(h) school support (responsibility of municipality)	Yes	Yes							
(i) whether property is assessable (see s. 298)	Yes	Yes	Yes (s. 374.1)						
(j) whether property is taxable or business is exempt from taxation under Part 10	Yes	Yes	Yes			Yes		Yes	

Table 2 – Local Assessment Review Board Timelines

Local Assessment Review Board (LARB) Timelines Step and Timeline	Residential property, 3 or less dwelling units, or farm land Assessments LARB	Business tax Assessment LARB	Non-assessment Matters on Assessment Notice One-member LARB	Matters on Tax Notice One-member LARB	Administrative or Procedural Matters One-member LARB
Assessment or tax notice sent					
(a) Number of days for filing a complaint	60 days	30 days	60 days	30 days	n/a
Complaint filed					
(b) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	30 days or less	30 days or less	n/a
(c) Soonest hearing date after complaint is filed	35 days	35 days	n/a	n/a	n/a
(d) Number of days before hearing to notify parties of time and place of hearing	35 days	35 days	15 days	15 days	15 days
(e) Number of days before hearing for complainant disclosure	21 days	21 days	7 days	7 days	7 days
(f) Number of days before hearing for respondent disclosure	7 days	7 days	7 days	7 days	7 days
(g) Number of days before hearing for complainant rebuttal	3 days	3 days	n/a	n/a	n/a
Merit hearing					
(h) Issue written decision	30 days	30 days	30 days	30 days	30 days
(i) Send decision	7 days	7 days	7 days	7 days	7 days

Table 3 – Composite Assessment Review Board Timelines

Composite Assessment Review Board (CARB) Timelines Step and Timeline	Residential property and 4 or more dwelling unit Assessment CARB	Non-Residential property Assessment CARB	Non-assessment Matters on Assessment Notice One-member CARB	Administrative or Procedural Matters One-member CARB
Assessment or tax notice sent				
(a) Number of days for filing a complaint	60 days	60 days	60 days	n/a
Complaint filed				
(b) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	30 days or less	n/a
(c) Soonest hearing date after complaint is filed	70 days	70 days	n/a	n/a
(d) Number of days before hearing to notify parties of time and place of hearing	70 days	70 days	15 days	15 days
(e) Number of days before hearing for complainant disclosure	42 days	42 days	7 days	7 days
(f) Number of days before hearing for respondent disclosure	14 days	14 days	7 days	7 days
(g) Number of days before hearing for complainant rebuttal	7 days	7 days	n/a	n/a
Merit hearing				
(h) Issue written decision	30 days	30 days	30 days	30 days
(i) Send decision	7 days	7 days	7 days	7 days

Table 4 –Municipal Government Board Timelines

Municipal Government Board Timelines Step and Timeline	Linear Property Assessment	Non-assessment Matters on Linear Property Assessment Notice	Equalized Assessment (report of all equalized assessments)	Administrative or Procedural Matters
Assessment notice sent				
(j) Number of days for filing a complaint	60 days	60 days	30 days	n/a
Complaint filed				
(k) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	7 days or less	n/a
(l) Soonest hearing date after complaint is filed	70 days	n/a	70 days	n/a
(m) Number of days before hearing to notify parties of time and place of hearing	70 days	15 days	70 days	15 days
(n) Number of days before hearing for complainant disclosure	42 days	7 days	42 days	7 days
(o) Number of days before hearing for respondent disclosure	14 days	7 days	14 days	7 days
(p) Number of days before hearing for complainant rebuttal	7 days	n/a	7 days	n/a
Merit hearing				
(q) Issue written decision	30 days	30 days	30 days	30 days
(r) Send decision	7 days	7 days	7 days	7 days

Table 5 – Process for Administrative Clerks

Assessment Review Board Clerk / MGB Administrator Duties and Responsibilities	
Complaint is filed	Receive and categorize complaint (LARB or CARB)
Notify Municipality / Assessor of complaints	Notice to be given within 30 days of receiving complaints.
Contact MGB if complaint is to be heard by a CARB	Presiding Officer assigned by MGB Case management done in cooperation with MGB Administrator
Complaint reviewed for compliance	Filed On Time Content Standardized Complaint Form complete
Schedule Hearings	Length of hearing, one-member board, etc For CARB complaints, a minimum of 70 days after complaint is filed. For LARB complaints, a minimum of 35 days after complaint is filed.
Notify parties of hearings	For CARB complaints, notify parties of time and location of hearing at least 70 days before the hearing. For LARB complaints, notify parties of time and place of hearing at least 35 days before the hearing (currently 14 days)
Review for disclosure process and timelines	Based on property type, the disclosure process will follow either the LARB or CARB disclosure timelines.
Where all parties have consented:	The disclosure timelines for LARB may be substituted for the disclosure timelines for CARB, and conversely, the disclosure timeline for CARB may be substituted for the disclosure timeline for LARB.
Hearing	Ensure documents are prepared and ready for board members; room is prepared, record hearing minutes, or other duties as agreed by the board.
Post hearing	Complete and file record of the hearing.

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Municipal Affairs

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ISBN 978-1-4601-0377-7 Print
ISBN 978-1-4601-0378-4 Electronic